TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 577

STANDARD PIPE LINE COMPANY, INCORPORATED, PETITIONER,

vs.

MILLER COUNTY HIGHWAY & BRIDGE DISTRICT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 5, 1937

CERTIORARI GRANTED NOVEMBER 22, 1937

(33,029)

(33,029)

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[fol. a] [Caption omitted.]

[fol. 1] Citation, in usual form, showing service on David C. Arnold, filed October 6, 1925, omitted in printing.

[fol. 2]

IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF ARKANSAS, TEXARKANA DIVISION

No. 128. Equity

STANDARD PIPE LINE COMPANY, INCORPORATED, Plaintiff,

vs.

MILLER COUNTY HIGHWAY & BRIDGE DISTRICT, Defendant

BILL OF COMPLAINT—Filed May 21, 1924

Now comes the Standard Pipe Line Company and for its cause of action against the defendant, Miller County Highway & Bridge District, alleges that the plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Louisiana and is therefore a citizen of the State of Louisiana domiciled in the city of Baton Rouge, and that the defendant is a corporation organized and existing under and by virtue of Special Act No. 153 of the Acts of the Legislature of Arkansas of the year 1915, and said defendant is therefore a citizen of the state of Arkansas domiciled in Miller County and F. W. Offenhauser, Dr. R. H. T. Mann and Dr. J. R. Dale constitute the Board of Commissioners for said district, and they too are resident citizens of Texarkana, Miller County, Arkansas, which is in the Texarkana Division of the United States District Court for the Western District of Arkansas, and the matter in dispute herein, exclusive of interest and costs, exceeds the sum or value of $3,000.00 and is of a civil nature, and plaintiff invokes the jurisdiction of this court on the ground of diversity of citizenship between plaintiff and defendant, and on the further ground that the interpretation and appli-

cation of the United States Constitution is involved in this cause.

Plaintiff alleges that by said Special Act 153 of the acts of the General Assembly of the state of Arkansas of the year 1915, the defendant Road District was created a body politic for the purpose of constructing public highways within said district, one leading from Texarkana in an easterly direction to within three miles of Garland City; [fol. 3] another leading in a northeasterly direction from Texarkana to Red River; a lateral from Paup's Spur in a northwesterly direction to Index, and a few miles of road on the western boundary line of the county, said district embracing the city of Texarkana and all that land that lies north of the division line between townships 15 and 16 in said county.

Plaintiff alleges that it is engaged in the transportation of crude oil as a common carrier by means of pipe lines laid beneath the surface of the earth, and in the operation of its business it has a line of pipe entering the defendant Road District at a point in a south line of section 31, Township 15 south, range 27 West, aad running in a northwesterly direction to Mandeville and continuing in the same general direction to Red River. A plat or map is hereto attached showing the boundaries of said Road District, the location of the roads constructed, and the location of said pipe line.

Plaintiff alleges that under the authority of the act creating said district the Board of Commissioners thereof appointed E. G. Anderson, George T. Conway and J. C. Edwards as the Assessors for said district to assess the benefits to be received by each land owner by reason of the improvements, and under the pretended authority of said act said assessors made and filed with the county clerk of Miller County, Arkansas, on July 24, 1920, an assessment of benefits to accrue by reason of the construction of said highways, and in said assessment of benefits said commissioners extended against twelve miles of pipe line and telegraph line that now belong to this plaintiff the sum of $5,000.00 per mile, an aggregate assessment of benefits of $60,000.00, and said Board of Commissioners are attempting to collect annual payments based upon said assessment of benefits.

Plaintiff alleges that all of its said property is personal property and is therefore not subject to assessment for local improvements under the Constitution of Arkansas, and alleges that its said pipe line and telegraph line do not constitute any interest in real estate, and the plaintiff is not the owner of the land through which said lines run, but merely has the easement to maintain and operate a line of pipe through said lands.

Plaintiff shows that said property is assessed as personal property each year by the Arkansas Railroad Commission and is extended for the purpose of general taxation upon the personal tax books of Miller County.

[fol. 4] Plaintiff further alleges that said pipe line and telegraph line are in no manner whatever [benefited] by the construction of said highways, or any other highways, and the attempt to include said properties within said district was solely for the purpose of raising revenue and not because the same was [benefited] by said highway, and the value of said property has not been enhanced in any sum whatever by reason of the construction of said highways.

Plaintiff alleges that, as hereinbefore stated, it is engaged exclusively in the transportation of crude oil as a common carrier, receiving oil at the Oklahoma boundary line in Sevier County and transporting the same through Little River County and Miller County to the Louisiana line and it neither receives nor distributes any products in Miller County and is not [benefited] by the development of the agricultural lands within said territory, which was the purpose of the creation of said district, and in its business the highway has no value whatever.

Plaintiff alleges that said assessment against said property of this plaintiff is arbitrary, illegal, discriminatory and void, and is in violation of Article 5, Section 16, of the Constitution of Arkansas and Section 1 of the 14th Amendment to the Constitution of the United States.

Plaintiff alleges that in assessing the benefits to accrue to the lands within said district, said Board of Assessors divided the same into zones, determined by distance from the highway, and assessed uniform benefits upon all lands within the same without regard to improvements or market value; in the first $30 per acre; second $25.00 per acre, and third, $20.00 per acre; and telegraph and telephone lines

were assessed at $200.00 and $250.00 per mile, and the pipe line of this plaintiff was assessed at $5,000.00 per mile without any designated basis, and plaintiff alleges that although the pipe line of this plaintiff in said district does not occupy more than seven acres of land, and although the plaintiff does not own the lands through which said line runs, and although said lands through which said line runs are assessed by reason of said highway, there is extended against said property the grossly disproportionate and palpably arbitrary assessment of $80,000.00.

Plaintiff alleges that there is a discrimination against it and in favor of the owners of land within said district on account of the fact that the property of the plaintiff is personal property when the personal property of all other own-[fol. 5] ers of real property in said district is not taxed, and plaintiff alleges that the enforcement of said benefits will result in the denial to this plaintiff of the equal protection of the law, and will take away its property without due process of law in violation of the guaranties of the 14th amendment to the Constitution of the United States, and will further result in private property being taken for public use without just compensation therefor in violation of the 5th amendment to the Constitution of the United States.

Wherefore, plaintiff prays that defendant be restrained and enjoined from collecting or attempting to collect from this plaintiff or its said property any tax whatever on account of said highways, and that said assessment of $80,000.00 against twelve miles of pipe line and telegraph line that now belong to this plaintiff be cancelled and declared void as a cloud upon the title of plaintiff, and for such other relief to which it may be entitled in law and in equity, and in duty bound will ever pray.

I. M. Milling, Arnold & Arnold, Attorneys for Plaintiff.

Duly sworn to by F. Roy McGrew. Jurat omitted in printing.

In United States District Court

Motion to Dismiss—Filed June 23, 1924

The Plea of the Above-named Defendant, Miller County Highway & Bridge District, to the Bill in Equity of the Standard Pipe Line Company, Incorporated

The defendant, Miller County Highway & Bridge District, by protestation not confessing or acknowledging all or any part of the matters or things in the said bill in equity to be true in such manner and form as the same are therein set forth and alleged, does plead thereto and presents this its [fol. 6] plea, and for its motion to dismiss states: that the said bill in equity contains the following allegations.

"Plaintiff alleges that all of its said property is personal property and is therefore not subject to assessment for local improvements under the Constitution of Arkansas, and alleges that its said pipe line and telegraph line do not constitute any interest in real estate, and the plaintiff is not the owner of the land through which said lines run, but merely has the casement to maintain and operate a line of pipe through said lands.

Plaintiff shows that said property is assessed as personal property each year by the Arkansas Railroad Commission and is extended for the purpose of general taxation upon the personal tax books of Miller County."

"Plaintiff alleges that there is a discrimination against it and in favor of the owners of land within said district on account of the fact that the property of this plaintiff is personal property when the personal property of all other owners of real property in said district is not taxed, and plaintiff alleges that the enforcement of said benefits will result in the denial to this plaintiff of the equal protection of the law, and will take away its property without due process of law in violation of the guarantees of the 14th amendment to the Constitution of the United States, and will further result in private property being taken for public use without just compensation therefor in violation of the 5th Amendment to the Constitution of the United States."

That in truth and in fact, under the decisions of the Supreme Court of the State of Arkansas, pipe lines and telegraph lines constructed under, on and over rights of way

owned and under the control of the pipe line and telegraph companies, are real estate and are subject to assessment for local improvements and the bill of plaintiff should be dismissed, since said pipe lines and telegraph lines, being real estate, they are legally subject to the assessment for road purposes, objected to in plaintiff's bill. Defendant as alleged in the bill was created a body politic under the laws of the State of Arkansas by Special Act No. 153 of the Acts of the General Assembly of the state of Arkansas of the year 1915, for the purpose of constructing a public highway within the road district thus formed.

Said Act above mentioned was amended by Special Act No. 15 of the Acts of the General Assembly of the State of Arkansas of the year 1917.

[fol. 7] The assessment of benefits to the plaintiff's pipe line and telegraph line and all other property subject to assessment for said road district was made, as alleged in plaintiff's bill, and filed with the County Clerk of Miller County, Arkansas, on July 24, 1920. Such assessment was made as required by Sections 7 and 8 of Act No. 153 of the year 1915; and Section 6 of Act No. 15 of the year 1917.

In accordance with the terms of said Acts, any property owner aggrieved by action of the Board of Assessors, may take an appeal to the Commissioners of Miller County Highway & Bridge District within thirty days, and any property owner may take an appeal from the decision of said Commissioners to the County Court of Miller County within thirty days after the decision of said Commissioners.

It is not alleged or shown in plaintiff's bill that any appeal was taken by the plaintiff from the assessment made by said Board of Assessors and it is not alleged or shown in plaintiff's bill that any appeal was taken by plaintiff from any decision of said Commissioners to the County Court of Miller County, Arkansas; and it is not shown by plaintiff's bill that plaintiff pursued or attempted to pursue its remedy at law to obtain redress and relief from the assessment complained of in said bill.

Wherefore premises considered, this defendant prays that bill of the plaintiff be dismissed for want of equity in that the assessment complained of, is made against real estate and not personal property of the plaintiff and for the further cause that the plaintiff had a full, adequate and

complete remedy at law, and failed to pursue plaintiff's said legal remedy; and for the further cause that the time within which the plaintiff's action should be brought has long since expired, and the plaintiff is barred by limitations set forth in the above mentioned acts from bringing any action in law or in equity to set aside the assessment complained of; and the defendant specially pleads in bar to plaintiff's bill, said statute of limitations and asks that for the above mentioned reasons said bill in equity be dismissed, and for the further reason that this court of equity is without jurisdiction in this cause.

Miller County Highway & Bridge District, by Henry Moore, Jr., Solicitor and Counsel.

[fol. 8] I hereby certify that the foregoing plea is in my opinion well founded in point of law.

Henry Moore, Jr., Solicitor and Attorney for Defendant, Miller County Highway & Bridge District.

STATE OF ARKANSAS,
County of Miller:

Henry Moore, Jr., being duly sworn, deposes and says: I am the Attorney for the above mentioned defendant. The foregoing plea is true in point of fact in my opinion and is not interposed for delay.

Henry Moore, Jr.

Sworn to before me this 20th day of June, 1924. Louis Josephs, Notary Public. My commission expires Nov. 4, 1925. (Seal.)

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING MOTION TO DISMISS—Filed December 10, 1924

Defendant's motion to dismiss, heretofore submitted, having been duly considered, the court being now well and sufficiently advised in the premises, doth overrule said motion.

To the action of the court in overruling said motion the defendant duly excepted at the time.

Frank. A. Youmans, Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED AND SUBSTITUTED BILL OF COMPLAINT—Filed March 20, 1925

Comes now The Standard Pipe Line Company, complainant in the above entitled cause, and respectfully shows:

[fol. 9] 1

That complainant, The Standard Pipe Line Company, incorporated, is and was, at all times hereinafter mentioned, a corporation duly chartered, organized and doing business under the laws of the State of Louisiana, and that it is and was, at all times hereinafter mentioned, a citizen and resident of the United States and of the State of Louisiana within the meaning of the Acts of Congress pertaining to jurisdiction of the courts of the United States.

2

That the defendant, the Miller County Highway and Bridge District is a corporation, organized and existing under and by virtue of the Special Act No. 153 of the Acts of the Legislature of the State of Arkansas for the year 1915, as amended by Act 15 of the year 1917, and that said defendant is a citizen and resident of the United States and of the State of Arkansas within the meaning of the Acts of Congress pertaining to jurisdiction and of the courts of the United States, and is a citizen of Miller County, Arkansas, and of the Texarkana Division for the United States District Court for the Western District of Arkansas, and that said defendant is a body politic and capable of suing and being sued and impleaded.

3

That the amount in controversy in this cause, exclusive of interest and costs, exceeds the sum of Three Thousand Dollars ($3,000.00) and that the acts hereinafter complained of, with reference to this complainant and its property are in violation of the rights guaranteed to it by the provisions of the Constitution of the United States.

4

Complainant alleges that by the provisions of Special Act No. 153 of the Acts of the General Assembly of the State of Arkansas for the year 1915, the defendant, the Miller County Highway and Bridge District, was created as a body politic for the purpose of constructing public highways within the boundary of said district, as defined by said Acts of the General Assembly, and in pursuance thereof and in pursuance of Act 15 of the year 1917, defendant constructed highway from the city of Texarkana, running in an easterly direction to a point within three (3) miles of Garland City; another leading in a northeasterly direction from Texarkana to Red River; a lateral from [fol. 10] Paup's Spur in a northwesterly direction to Index, and in a few miles of road on the western boundary line of Miller County, said district embracing the city of Texarkana and all of that part of Miller County, Arkansas, lying north of the division line running between townships fifteen (15) and sixteen (16) in said county.

5

Complainant further alleges that under the provisions of said Special Act No. 153 of the year 1915 and Act No. 15 of the year 1917 of the State of Arkansas, the affairs of said Miller County Highway and Bridge District shall be managed and controlled and all improvements authorized shall be made by a Commission which shall be composed of three land owners, residents of said district, and by provisions of said Special Acts, E. W. Frost, J. R. Dale and Fred W. Offenhauser were appointed the Commission of said Miller County Highway and Bridge District.

6

Complainant further alleges that said Special Act No. 153 of the General Assembly of the State of Arkansas for the year 1915 further provided that said Commission should appoint three Assessors, whose duty it shall be to ascertain the value of the real property within said district, without said improvements, and also the value of all the roads, tramroads, street railroads, electric light and water plants, rights of way, telephone and telegraph pipe lines, all other franchises of whatsoever description, in any manner connected with the reality in said district without said improvement, and the value thereof as benefitted by said improvement, and shall charge against each lot, tract or parcel of real estate, railroad, tramroad, street railway, electric light and gas plants, water plants, rights of way, telephone and telegraph lines, pipe lines, and all other franchises whatsoever connected with the realty in said district, an asses-ment according to the value of the benefit that will accrue to it by reason of the construction of said highways.

7

Complainant alleges that under the authority of the said Acts, the Board of Commissioners thereof appointed E. G. Anderson, George T. Conway, and J. C. Edwards as the Assessors of said district, whose duty it was to file with the Commission a list showing the description of the property of [fol. 11] the district, the owner's name as far as same appears from the last county assessment, and such correction as they may ascertain should be made, and the valuation of each lot, tract or parcel of land, railroad, street railway, gas and electric light plant, water plant, tramroads, telephone and telegraph lines, pipe lines and all other franchises of whatsoever description in any way connected with the reality in said district without the improvement, and the valuation with the improvement, and the benefit estimated to accrue to each lot, tract or parcel of land, railroad, tramroad, street railway, gas and electric light plant, water plant, telegraph and telephone lines, pipe lines and all other franchises of whatsoever description in any way connected with the realty in said district by reason of the im-

provement, and shall file the same with the Count- Clerk of Miller County, Arkansas.

8

Complainant further states that it is a public service corporation and engaged in the business of transporting for hire crude petroleum oil by means of pipe lines laid beneath the surface of the earth and in the operation of its business it has and owns, maintains and operates a pipe line extending from the state of Oklahoma, through the State of Arkansas, to and through the state of Louisiana, and that it has a line of pipe entering the defendant's road district at a point in the south line of Section Thirty-one (31), Township Fifteen (15) South, Range Twenty-seven (27) West, and running in a northwesterly direction to Mandeville and continuing in the same general direction to the Red River. A plat or map is hereto attached showing the boundaries of said road district and the location of the roads constructed, and the location therein of the pipe lines of this complainant.

Complainant alleges that the oil which it transports through its said pipe lines located within the Miller County Highway and Bridge District is oil which it has received as a common carrier for shipment and transportation from the state of Oklahoma, through the State of Arkansas, to and through the State of Louisiana, and that in the operation of its business of transporting crude petroleum oil by means of pipe lines, it is a common carrier for hire, engaged solely in interstate commerce, and that in connection with said pipe lines it owns and maintains a telegraph line, which said telegraph line is a necessary incident to the business of transporting crude petroleum oil by means of pipe lines; that no messages to be transmitted over its said tele- [fol. 12] graph line are received or transmitted by this complainant and that said telegraph line is only used by it in connection with its transportation of crude petroleum oil in interstate commerce, and is a necessary incident thereto.

Complainant further states that it does not transport through its said pipe lines any product of the State of Arkansas, and that it does not transport through its said pipe lines any product to the State of Arkansas, and that the sole revenue which it derives from its said pipe lines

is through charges which it receives for the transportation of crude petroleum oil as a common carrier for hire, and that its said pipe lines are not and cannot be benefited by any improvement which does not prolong the life of its lines or increase the amount of the commodity which it transports through its said pipe lines; that the business of this complainant is not in any way affected and is neither increased nor decreased by the development, advancement or improvement in that part of the State of Arkansas through which its said pipe lines run and that the amount of its business and the amount of its revenue solely depends upon the transportation and movement of a commodity which is not produced in the State of Arkansas and which is not in any manner affected by any highways or bridges that may be constructed within the territory of the Miller County Highway and Bridge District, or any other improvement therein; that the material of the pipe lines of this complainant is made of rolled steel which is buried in the ground, which, in accordance with the very nature of things, it has a tendency to return to its native state, due solely to the acts of the elements of nature, and that the construction of any highways or bridges within the territory of the Miller County Highway and Bridge District will in no way prolong the life of the pipe lines of this complainant and will in no way increase their carrying capacity, and will in no way increase the amount of crude petroleum which it may have tendered to it for transportation as a common carrier by means of its pipe lines.

9

Complainant further states that its said pipe lines are laid, maintained and operated over and through lands through which it runs, which said lands are owned by persons other than this complainant, and that this complainant merely has a right to lay, maintain, operate and remove its said pipe lines through said lands, which said rights are based upon a contract which it and its predecessors have [fol. 13] procured from the land owners, and which said contract does not convey to this complainant or its predecessors any part of said land or real estate, but merely permits the right to lay, maintain, operate and remove a pipe line to be laid in no particular location, and that the rights which this complainant has under said contract ter-

minates with the termination of its occupancy of said lands by its pipe lines, and this complainant states that it does not own any of the lands on which its pipe lines are located, but merely has the right therein in the nature of a license. This complainant states that its said pipe lines are personal property, and are assessed as personal property by the Railway Commission of the State of Arkansas.

10

Complainant further alleges that the said E. C. Anderson, George T. Conway and J. C. Edwards, appointed as assessors aforesaid, under the authority of the Act of the General Assembly creating said Miller County Highway and Bridge District and the Act amendatory thereof, under the pretended authority of said Act, did make and file with the County Clerk of Miller County, Arkansas, an assessment of benefits to accrue by the reason of the construction of said highways, and that said Assessors in assessing the benefits to accrue to the lands within said Miller County Highway and Bridge District divided the same into zones, determined by the distance of said lands from the highway and assessed uniform benefits upon all lands within the same zone without regard to improvements thereon or market value thereof; that said Assessors in assessing the land in the first zone assessed the benefits at $30.00 per acre, and on the lands located in the second zone they assessed the benefits at $25.00 per acre, and on the lands in the third zone they assessed the benefits at $20.00 per acre; that said assessors assessed the benefits on telephone and telegraph lines at from $200.00 to $250.00 per mile; and that said assessors, under the pretended authority of said Acts of the General Assembly of the State of Arkansas did attempt to assess a benefit to the said pipe lines which are the property of this complainant and that although the said pipe lines are personal property, and although the said Board of Assessors had assessed the benefits by reason of said improvements to the lands through which said pipe lines are laid, and that although said improvement would not in any way or any manner prolong the life of said pipe lines, nor in any way or any manner increase their carrying capacity, nor in any way or any manner increase the revenue to be

[fol. 14] derived therefrom by the owners thereof, did under the pretended authority of said Acts attempt to assess a benefit against the pipe lines so owned by this complainant and that said Board of Assessors, so acting as aforesaid, without any designated basis, and without considering the location of said pipe lines with reference to the location of the highways to be constructed, systematically, intentionally, unlawfully and in violation of the provisions of Article 5, Section 16 of the Constitution of the State of Arkansas and in violation of the provisions of the 5th and 14th Amendments to the Constitution of the United States, did assess a benefit to said pipe lines at Five Thousand ($5,000.00) per mile, and did wrongfully, fraudulently, systematically and intentionally and in violation of the provisions of the Constitution of the State of Arkansas and the provisions of the Amendments to the Constitution of the United States, as aforesaid, assess benefits to twelve (12) miles of pipe lines and telegraph line now belonging to this complainant at an aggregate assessment of Sixty Thousand ($60,000.00) Dollars, all of which is wholly unwarranted and a flagrant abuse, grossly disproportionate and palpably arbitrary, and in discrimination against the property of this complainant and in violation of its rights and to its injury, and by reason of its arbitrary character it is a confiscation of the said property of this complainant and in volation of its rights and property guaranteed to it by the provisions of the Constitution of the United States.

Complainant further alleges that in making said attempted assessment of benefits against the said pipe lines of this complainant, the said Board of Assessors did systematically and intentionally discriminate against it and in favor of the owners of land within said district and did attempt to assess a benefit to the personal property of this complainant, whereas the personal property of all owners of real estate in said district did not have benefits assessed against it. And this complainant states that the said action of the said Board of Assessors in attempting to assess a benefit against the pipe lines of this complainant, as aforesaid, in the manner in which they did, as aforesaid, was so wholly unwarranted, unlawful, grossly disproportionate and palpably arbitrary and in discrimination against the property of this complainant; that the same constitutes fraud and is

in violation of the rights of this complainant and to its injury, and in violation of its rights and property guaranteed to it by the provisions of the Constitution of the United States.

[fol. 15] 11

Complainant further states that all of the oil which it transports through its said pipe lines as a common carrier for hire, is oil which is delivered to it by the Oklahoma Pipe Line Company, which said Oklahoma Pipe Line Company is a corporation organized and existing under and by virtue of the laws of the State of Oklahoma and is a common carrier engaged in the business of transporting crude petroleum oil by means of pipe lines for hire, and that in delivering crude petroleum oil to this complainant for transportation as a common carrier through its said pipe lines, the Oklahoma Pipe Line Company is a connecting carrier and this complainant states that the amount of oil that it may transport through its said pipe line as a common carrier in the use and enjoyment of its said pipe lines as a common carrier, is dependent wholly and entirely upon the amount of oil which is delivered to it by the Oklahoma Pipe Line Company, a connecting carrier as aforesaid. And this complainant says the oil which the Oklahoma Pipe Line Company delivers to this complainant as a connecting carrier, is oil which has been tendered to the said Oklahoma Pipe Line Company by the producers of crude petroleum oil in the oil fields in the States of Oklahoma and Kansas; that the said Oklahoma Pipe Line Company in its business as aforesaid, has many competitors and there are many competing pipe line companies; that the oil fields of the State of Kansas and Oklahoma, from which the Oklahoma Pipe Line Company receives its tenders of shipment, are served by various other pipe lines running in various directions through this part of the United States, and this complainant states that it is a well known fact that crude petroleum oil is a natural deposit; that this deposit is systematically and continually decreasing and the exhaustivity of all oil fields is a well known fact, universally accepted and that the only commodity that this complainant can transport through its said pipe lines is crude petroleum oil, and that therefore it can only engage*d* in the business of

transporting crude petroleum oil so long as the oil fields in the States of Oklahoma and Kansas continue to produce oil.

Complainant states that the benefits assessed on account of the construction of the highways in the defendant road and bridge district are permanent benefits, to be continued and enjoyed indefinitely and that by reason of the facts as aforesaid, the right or license of this complainant to lay and maintain and operate its pipe lines through the lands in the [fol. 16] defendant road and bridge district is limited in time, dependent upon the life of the oil fields which produce the crude petroleum tendered to it by its connecting carrier the Oklahoma Pipe Line Company as aforesaid, and this complainant states that when the oil deposits in the said States of Kansas and Oklahoma are exhausted, the Oklahoma Pipe Line Company will of necessity discontinue making tenders of oil to this complainant as a connecting carrier, and that the said pipe lines of this complainant will cease to function and will be of no further use to this complainant in the locality in which they are now laid and maintained, and that when said pipe lines cease to be of use to the complainant as aforesaid, it will be necessary that the same be removed and this complainant states that any right or license which it has to lay and maintain its pipe lines through the lands in the defendant road and bridge district will cease and expire upon the renewal of its said pipe lines therefrom

Wherefore, this complainant states and alleges that it has no permanent right or interest in any lands in the defendant road and bridge district which can in any way be permanently benefited by the road improvements in said defendant road and bridge district and that any license or right which this complainant has in any lands in the defendant road and bridge district are inconsequential, fanciful and intangible and incapable of in any way being [benefitted] to any extent or in any amount on account of the improvement made by said defendant road and bridge district, and this complainant says that by reason of the nature of its said pipe lines as aforesaid, and that by reason of the temporary license or right which it has to lay and maintain its lines across and through the lands in the defendant road and bridge district, and that by reason of the universal accept-

ance of the fact that the source of supply of crude petroleum which it may have tendered to it for transportation through its said pipe lines is continually and systematically being depleted and with each succeeding day is approaching absolute exhaustion and cannot be replenished, that the attempted act of the said Board of Assessors as aforesaid to assess a benefit against the property of this complainant was wrongful and fraudulent and systematically and intentionally in violation of the provisions of the Constitution of the United States, and was wholly unwarranted and a flagrant abuse, grossly disproportionate, palpably arbitrary and discriminating against the property of this complainant and by reason of its arbitrary character it is a confiscation of the said property of this complainant.

[fol. 17] 12

Complainant states that after the assessment made as aforesaid by said Board of Assessors, the Commissioners of said defendant road and bridge district, did, by resolution, charge the pipe lines of this complainant as aforesaid with an assessment of Sixty Thousand ($60,000.00) Dollars and said Commission did apportion such assessment into annual installments of Six Hundred ($600.00) Dollars each to be paid annually and this complainant further states that under the provisions of Act No. 153 and Act No. 15 the said assessment so made against the pipe lines of this complainant is a lien against the said property of this complainant, and under the provisions of said Acts, said lien is entitled to preference over all judgments, executions, encumbrances and other liens whatsoever and this complainant states that said Board has levied a tax against the said pipe lines of this complainant based upon the said purported benefits so assessed and that said taxes have been extended upon the tax books of Miller County, Arkansas, and that the same thereby create a lien and a charge upon the said pipe lines of this complainant in the said defendant road and bridge district and that the Board of Commissioners of said defendant road and bridge district unless prevented by the order of this court will enforce the collection of said tax by chancery proceedings in the Chancery Court of Miller

County, Arkansas, and such court will give judgment against such property for the amount of such taxes and the penalty thereof of twenty-five (25%) per cent and all costs of the proceedings, and said judgment will provide for a sale of the said pipe lines of this complainant by a commissioner of the court to the satisfaction of said taxes and for penalties thereon at the rate of twenty five (25%) per cent and interest thereon at the rate of six (6%) per cent per annum, all in violation of the Constitution and laws of the State of Arkansas and of the Constitution of the United States and of the rights of this complainant, thereby unlawfully interfering with interstate commerce and causing this complainant to suffer irreparable loss and injury and to become engaged in the multiplicity of actions in order to protect its rights and property or to recovery of the unlawful invasion thereof; that said assessment and extension of the taxes so made thereon against the pipe lines of this complainant as aforesaid is a lien thereon and that the same constitutes a cloud upon complainant's title thereto, which [fol. 18] said cloud will diminish the market value of said property, unless removed, and will cause the loss of said property to its owners.

13

Complainant further respectfully shows to the court that it is a public service corporation engaged in the transportation of crude petroleum oil as a common carrier for hire and is engaged in interstate commerce as aforesaid and that its said pipe lines and telegraph lines are an essential instrumentality in the performance of its duties as an interstate carrier and the levy of said tax and the sale of its property in the amount sufficient to satisfy the alleged tax and penalties above referred to, will interfere with the complainant in the performance of its duties as an interstate carrier and would prevent it from properly continuing to operate its lines and perform its duties as an interstate carrier, all in violation of the provisions of the Constitution of the United States.

14

Complainant further states that under the purported authority of said Acts of the Legislature of the State of Ar-

kansas, the Commissioners of said Defendant road and bridge district, unless prevented by an order from this court, will cause an annual tax to be extended upon the tax books of Miller County, Arkansas, against the said pipe lines of this complainant on account of the assessment of benefits against it as aforesaid, which if not paid annually when due will be attempted to be collected by the Commissioners of said defendant road and bridge district by chancery proceedings in the Chancery Court of Miller County, Arkansas, together with a penalty of twenty-five (25%) per cent and interest as aforesaid, all in violation of the constitution of the laws of the State of Arkansas and of the Constitution of the United States and of the rights of this complainant, thereby unlawfully interfering with interstate commerce, causing this complainant to suffer irreparable loss and injury and to become engaged in a multiplicity of actions in order to protect its rights and property, or to the recovery of the unlawful invasion thereof.

15

Complainant would further respectfully show to the court that in so far as said Acts of the Legislature of the State of Arkansas attempted to authorize a benefit assessment to be made against the said pipe lines and telegraph lines of this complainant as aforesaid, it was wholly unconstitutional [fol. 19] and in violation of the provisions of the 14th Amendment to the Constitution of the United States and flagrant abuse of legislative authority and by reason of its arbitrary character is a mere confiscation of property, for the reason that the said pipe lines and telegraph lines of this complainant located within the said defendant road and bridge district cannot and will not be in any way or to any extent or in any manner benefited by the improvements provided for in said acts; that the service life of the said pipe lines and telegraph lines of this complainant as aforesaid would not in any way or in any manner be lengthened or extended; that the carrying capacity of the said pipe lines of this complainant as aforesaid would not in any way or in any manner be increased by the reason of the improvements provided for in said Acts, and that the revenue to be derived by this complainant from the use of its

said pipe lines as aforesaid would not in any way or in any manner be increased by the improvements provided for in said acts, and for the reason that the value, the service life and carrying capacity of the said pipe lines of this complainant, and its business as a common carrier as aforesaid and revenue that it might realize from its business as a common carrier as aforesaid could not in any way or in any manner be affected, enhanced or increased to any extent by any of the improvements provided for in said Acts, and for the reason that the business of this complainant as aforesaid was not, is not and could not in no way be affected, and is neither increased nor decreased by the development, advancement or improvements in that part of the State of Arkansas through which its said lines run, and for the reason that it does not transport through its said pipe lines any product of the State of Arkansas and that the amount of its business and the amount of its revenue and the value of its said pipe lines solely depend upon the transportation and movement of a commodity which is not produced in the state of Arkansas, the amount and movement of which is in no manner affected by highways or bridges that may be constructed in the territory of the Miller County Highway and Bridge District or any other improvement therein and that any attempt of the Legislature of the State of Arkansas to assess a benefit against said pipe lines and telegraph lines of this complainant in the said defendant road and bridge district on account of the improvements provided for in said Acts is palpably arbitrary, a flagrant abuse, wholly unwarranted and by reason of its arbitrary character amounts to a confiscation of [fol. 20] property and violation of the 14th Amendment to the Constitution of the United States and wholly unconstitutional and void, and this complainant states that any attempt to assess a benefit against the said pipe lines and telegraph lines of this complainant under the purported authority of said Acts is likewise wholly unlawful, unwarranted, grossly disproportionate, palpably arbitrary, discriminatory and by reason of its arbitrary character is a mere confiscation of property and wholly unconstitutional and void.

Complainant would further respectfully show that under the provisions of said Acts the said Board of Assessors of said defendant road and bridge district were directed to assess a benefit on all of the classes of property mentioned in said Acts and that all complaints to said Assessors or all appeals to the Commission or to the County Clerk, the only relief provided is that the assessment may be increased or decreased and that neither the said Board of Assessors, the Commissioners of the County Court, under the provisions of said Acts No. 153 and Act No. 15 had authority to entirely eliminate any of the classes of property mentioned in said Acts from the assessment of benefits, and that whereas the attempted assessment of said pipe lines and telegraph lines of this complainant were wholly unwarranted and unlawful, the pretended remedies for appeal provided for in said Acts would and does not afford to this complainant a full and complete relief and it therefore has no adequate remedy at law, and plaintiff alleges that the assessment of alleged benefits is void for the reason that the description of the property in the assessment of alleged benefits is so vague, indefinite and uncertain that the property cannot be found or identified or located, the property being described as " '12' pipe lines, '12' tel. and tel. lines" and an assessment of Five Thousand Dollars per mile or Sixty Thousand Dollars is extended against the same.

Plaintiff alleges that neither it nor the Prairie Pipe Line Co., from which plaintiff purchased the property in Arkansas and which the owner thereof at the time of the filing of the said assessment of alleged benefits, both companies being non-residents of the state of Arkansas, had knowledge of the filing of the alleged benefits and the plaintiff purchased the said lines without any knowledge of the said assessment of the alleged benefits and neither the plaintiff nor the Prairie Pipe Line Company had opportunity to [fol. 21] contest said assessment, having no notice thereof until long after the time for appeal had expired, and plaintiff further alleges that the Secretary of the Board of the defendants did not publish the notice required by law of the filing of said assessment of alleged benefits and no notice was published which was sufficient to put the plaintiffs or

its predecessors in title on notice that its lines within the boundaries of the defendant district were included in said assessment of benefits and plaintiff denies that it was by the provisions of said Acts afforded a complete relief and alleges that it had not and does not now have adequate remedy at law.

Complainant further states that the attempted assessment of benefits against the pipe lines and telegraph lines of this complainant as aforesaid would result in irreparable injury to the complainant and for which it has no adequate remedy at law; the damage resulting from the stopping of the movement of oil through complainant's pipe lines would be uncertain and incapable of definite ascertainment, in that the amount of traffic carried from day to day is uncertain and wholly dependent upon the amount of such traffic offered by shippers; that the property of this complainant upon which said alleged and unlawful tax constitutes a lien, consists entirely of instrumentalities used by it in the business of a common carrier engaged in interstate commerce and that said tax and lien, as aforesaid, enforced by a sale of this complainant's property as aforesaid, will constitute an unlawful burden upon interstate commerce; that complainant is without adequate remedy at law; that the said attempted assessment of benefits against the property of the complainant as aforesaid and the extension of the annual tax thereon constitute a lien and a cloud upon the title of this complainant to its property which will result in irreparable injury and cause this complainant to become engaged in a multiplicity of actions in order to protect its rights and property or to recover the same, for which it has no adequate remedy at law, and that the said attempted assessment of benefits as aforesaid is so discriminatory, palpably arbitrary, unwarranted and a flagrant abuse and by reason of their arbitrary character amounts to a confiscation of property, for which this complainant has no adequate remedy at law.

Wherefore, the complainant prays that the defendant be restrained and enjoined from collecting, or attempting to [fol. 22] collect from this complainant, or from collecting or attempting to collect by enforcement of a lien upon its property, any tax whatsoever on account of the said benefits so assessed against the complainant's property as afore-

said, or on any future assessment of benefits, and that said defendant, its Board of Commissioners, Board of Assessors and its successors in office, all other [officers], agents and employees of said Miller County Highway and Bridge District be perpetually enjoined and restrained from levying any tax or assessment against the pipe lines and telegraph lines of this complainant under the provisions of Act No. 153 passed by the General Assembly of the State of Arkansas for the year 1915 and Act No. 15 of the year 1917, and that they be perpetually enjoined and restrained from attempting to enforce collection of said tax under the chancery proceedings provided for in said Special Acts No. 153 and No. 15 or any penalty or interest thereon and they be perpetually restrained and enjoined from proceeding further to assess, levy or collect any tax whatever levied against the pipe lines and telegraph lines of this complainant under the provisions of said Act No. 153 and Act No. 15 and that this complainant may have such other and further relief as it in equity and good conscience may be entitled to.

T. M. Milling, T. J. Flannelly, H. C. Black, [Plaintiffs] for Complainant. Arnold & Arnold.

[fol. 23] In United States District Court

Answer—Filed April 2, 1925

Now comes the defendant, Miller County Highway & Bridge District answering under protest and reaffirming and reasserting its motion to dismiss herein filed in this cause, for answer to the amended and substituted bill of complaint herein states:

1

It admits the plaintiff is a corporation organized and existing under the laws of the State of Louisiana and is therefore a citizen and resident of the United States.

2

It admits that this defendant is a quasi corporation organized and existing under the laws of the state of Arkan-

sas by virtue of Act No. 153, passed during the year 1915, and Act No. 15 passed during the year 1917 by the General Assembly of the State of Arkansas, and that the domicile of said defendant is in Miller County, Arkansas.

3

It denies that the amount in controversy in this cause exclusive of interest and costs exceeds the sum of Three Thousand Dollars ($3,000.00) and denies that acts complained of in plaintiff's bill are in violation of the rights guaranteed the plaintiff by the provisions of the Constitution of the United States.

4

It admits that in accordance with the authority granted by the State of Arkansas the defendant has built the roads set forth in Section 4 of plaintiff's complaint and in addition thereto has built twenty (20) miles of road to Dooley's Ferry on Red River east of Texarkana.

5

The defendant states that the present commissioners of Miller County Highway & Bridge District duly appointed, qualified and acting are F. W. Offenhauser, R. H. T. Mann and L. C. Adams.

6

The defendant admits that under the terms of the act creating said district three assessors were appointed to assess the benefits accruing to the lands, railroads, tramroads, [fol. 24] telegraph and telephone lines, pipe lines and other property within said district, and would accrue by reason of the construction of said highway.

7

This defendant admits that E. G. Anderson, George T. Conway, and J. C. Edwards were appointed assessors of the said district, and it was made their duty to file with the Commissioners a list of the property in the district and to assess against said property the benefits that was estimated to accrue to each lot, tract or parcel of land, railroad, tramroad, telegraph and telephone line, pipe line within said

district; and also to file a copy of such assessment with the county and also to file a copy of such asses-ment with the county clerk of Miller County, Arkansas.

8

This defendant admits that the plaintiff is engaged in the business of transporting petroleum oil by means of pipe lines laid underneath the earth, and that said defendant has a line or lines of pipe running through and under the earth within the confines of the defendant road district

This defendant being without sufficient information from which to form an opinion as to whether the plaintiff is a common carrier for hire states that said plaintiff may carry oil for hire for outside parties, but that its principal business is the transporting of oil for itself or for various Standard oil companies closely affiliated, connected and controlled by the owners of the pipe line company.

This defendant admits that the telegraph line owned by the plaintiff is necessary in the business of transporting crude petroleum through the plaintiff's pipe lines and is used for the purpose of communication in reference to the business of the plaintiff.

This defendant admits that no oil at present, produced within the State of Arkansas is transported through plaintiff's pipe lines located within Miller County Highway & Bridge District. It denies that the sole revenue received by the plaintiff is for transportation charges on crude oil of persons or corporations not connected or closely affiliated with the plaintiff. It denies that said pipe lines are not benefited and cannot be benefited by improved roads built by defendant and states that such roads give access to plaintiff's pipe lines and enable the plaintiff at a greatly reduced cost to maintain repair, rebuild and operate said pipe lines. [fol. 25] This defendant states that since the advent of automobiles and trucks, access to all property and especially to property of the character of the plaintiff's renders a service to same and is a material advantage to the pipe lines and telegraph lines of the plaintiff.

9

This defendant admits that the said pipe lines are laid, maintained and operated over, through and under land

owned by persons other than the plaintiff, but alleges that the plaintiff has a right of way, through, over and under said lands giving it the exclusive right for the purpose of laying, operating, maintaining and repairing said pipe lines and that under the laws of Arkansas and under the authority of the acts creating said road and bridge district, the said pipe lines are real estate and are subject to the assessment of benefits for the defendant road and bridge district.

10

This defendant admits that the land within the district is divided into zones, assessed at Thirty Dollars ($30.00) per acre in the first zone, twenty-five Dollars per acre ($25.00) in the second zone, and twenty Dollars ($20.00) per acre in the third zone, and states that the total assessment of benefits made by the assessors after due consideration, against the pipe lines of the plaintiff located within said road district amounted to an aggregate assessment of Sixty Thousand Dollars ($60,000.00).

This defendant denies that said assessment is unwarranted, arbitrary or discriminatory or in violation of any rights guaranteed to the plaintiff under the Constitution of the United States.

This defendant denies that in making said assessment the Board of Assessors discriminated against the plaintiff and in favor of the owners of land within the district and denies that the pipe lines and telephone lines of the plaintiff assessed as being [benefitted] by the road are personal property.

The first assessment of benefits was made and filed by the assessors, and afterwards a re-assessment of benefits was made by the assessors against the various lands, railroads, pipe lines, telegraph and telephone lines situate within the said district, and was filed by said assessors with the county clerk of Miller County, Arkansas, on or about April 24th, [fol. 26] 1920. This defendant states that such reassessment of benefits was the same as the original assessment save only a change of assessment of certain lands due to changes in the location of the roads as built by the commissioners; that is the assessments against lands within the various zones according to their proximity to said sev-

eral roads, was raised or lowered according to the distance of the lands from the roads as said roads were finally located and built.

The defendant alleges that the assessment of benefits against the pipe lines and telegraph lines and property of the plaintiff was not changed in said re-assessment and said assessment of benefits against plaintiff's pipe lines, telegraph lines under section 6 of Act No. 15, passed by the General Assembly of the State of Arkansas during the year 1917, was ratified and confirmed, that no action was taken by the plaintiff for many years to contest said assessment of benefits as made and ratified by the Legislature of Arkansas, and that the plaintiff is now estopped from contesting said assessment of benefits.

The plaintiff is barred by limitation under the laws of the State of Arkansas from now contesting said assessment and this defendant specially pleads the various statutes of limitation as a bar to the plaintiff's action.

11

This defendant, being without sufficient information from which to form an opinion denies that all oil delivered to plaintiff is delivered by the Oklahoma Pipe Line Company, and states that all oil carried through the pipe lines of plaintiff is oil owned or controlled or furnished by corporations, the control and management of which are all centered in a Directorate or in persons closely affiliated and so connected that the various pipe lines and oil companies, although they may be separate corporations, are for practical purposes directed as though one sole corporation. This defendant denies that the fact that certain oil fields may become depleted has any legal bearing on the question of whether the pipe lines of the said Pipe Line Company are or are not subject to taxation in the defendant road district. This defendant alleges that new oil fields are being opened from year to year and the business of producing and transporting crude oil is one of a permanent character in the states of Arkansas, Oklahoma and Louisiana, and this defendant alleges that so long as the pipe lines of the plaintiff are located on a right of way controlled by the plaintiff, through the defendant road district, that the said pipe lines

are subject to assessment for road purposes and that the [fol. 27] benefits received by making said pipe lines easy of access are actual and permanent so long as said pipe lines are located within said road district. This defendant denies that the assessment of the Board of Assessors was wrongful and fraudulent and denies that the said assessment is wholly unwarranted, grossly disproportionate or discriminatory against the property of the plaintiff or in violation of the provisions of the constitution of United States.

12

This defendant states that originally the annual installment for road purposes to be collected from the plaintiff was Six Hundred Dollars ($600.00), one per cent (1%) of the total assessment; that because of the passage of the Harrelson Act by the State of Arkansas, said assessment has been reduced and through changes in the road laws of the state of Arkansas, it is possible and probable that additional reductions in the annual installment to be collected from the plaintiff as well as all other land owners within the district will be made.

This defendant states that the matters set up in plaintiff's complaint may and should be heard and tried in a court of proper jurisdiction upon any attempt being made by defendant to collect from the plaintiff the annual installment of taxes that may accrue and that the present bill is without equity in that the plaintiffs have not pursued the remedy granted them at law to try out the matters alleged in plaintiff's complaint. This defendant denies that it is interfering or will interfere with the Interstate Commerce and transportation alleged to be conducted by the plaintiff and denies that the plaintiff will suffer any irreparable loss and injury because of any suit or suits that may be brought by defendant against plaintiff.

13

This defendant denies that the amount of the annual levy for road purposes against the pipe lines of plaintiff is such as to interfere with any instrumentality of interstate commerce; and denies that the defendant has done or is con-

templating any action that will prevent the pursuance by the plaintiff of its duties as an inter or intra state carrier.

14

This defendant denies that the collection of the annual taxes authorized by the above mentioned acts of the Legislature of the State of Arkansas against the pipe lines of the plaintiff situate within the road district is in violation [fol. 28] of the constitution of the State of Arkansas or of the constitution of the United States, or that the collection of such taxes will interfere with any interstate commerce carried on by plaintiff; and denies that the plaintiff will suffer any irreparable loss and injury because of suits to be annually brought by defendant for road assessment taxes justly and legally due by the plaintiff.

15

This defendant denies that the assessment by the defendant under the authority of the Legislature of the state of Arkansas of benefits against the pipe lines and telegraph lines of the plaintiff is unconstitutional and in violation of the 14th amendment to the constitution of the United States; and denies that said pipe lines and telegraph lines will not in any way be benefited by the roads that have been built by the defendant.

This defendant alleges that access to said pipe lines and telegraph lines for inspection, repairs, maintenance and rebuilding is of a benefit to the plaintiff and to said pipe lines and telegraph lines.

16

This defendant denies that the assessment of the plaintiff's pipe line and telegraph lines was unwarranted and unlawful and denies that the remedies for appeal provided for in said acts could not and does not afford the plaintiff full and complete relief, but alleges that by pursuing the remedies allowed under the laws of the State of Arkansas, full relief could have been had, if any illegal or unwarranted assessment of benefits had been made against any property of the plaintiff.

This defendant denies that the description of the property of the plaintiff assessed for road purposes is vague, indefinite and uncertain; and denies that the property cannot be found or identified, but states that the property assessed is the pipe lines and telegraph lines located on right of ways controlled by the plaintiff over, under and across lands within the road and bridge district.

This defendant denies that it was necessary to give to the plaintiff or to the plaintiff's predecessor, the Prairie Pipe Line Company, any official notice of the assessment of benefits made against its property other than the notice as provided in the act creating the defendant road and bridge district, that the levying of the assessment was carried out in accordance with the laws of the State of Ar- [fol. 29] kansas and of the above mentioned acts creating the district; and at the time plaintiff purchased said pipe lines the roads had been built and the assessment of benefits against said lands had been made for many years: that plaintiff had the same notice as all other land owners within the district of the filing of said assessment of benefits, which notice complied with the laws of the State of Arkansas and the acts creating said district.

17

This defendant denies that the assessment of benefits against plaintiff's pipe line and telegraph lines will result in irreparable injury to the plaintiff and denies that such assessment of benefits will stop the movement of oil through plaintiff's pipe lines; and denies that said assessment will be an unlawful tax against an instrumentality used by the plaintiff as a common carrier in the interstate commerce; and denies that the assessment of the benefits and the extension of the annual tax thereon will result in irreparable injury to the plaintiff, and denies that the plaintiff has no adequate remedy at law; and denies that such assessment of benefits is discriminatory, arbitrary, or unwarranted or will amount to a confiscation of the property of the plaintiffs.

18

Having answered fully the allegations of the plaintiff, this defendant alleges that the roads built under the author-

ity of the act creating the defendant road district have greately benefited all of the property in Miller County, rural and urban and especially have benefited the pipe lines, telegraph and telephone lines of the plaintiff situate within said road district; that said lines have been made easy of access at all seasons of the year during all kinds of weather, and that because of said improved roads' the maintenance, repair and rebuilding of said pipe lines, telegraph and telephone lines has been greatly reduced.

The benefits assessed against the plaintiff's pipe lines and telegraph and telephone lines was confirmed by Act No. 15, passed by the General Assembly of the State of Arkansas, during the year 1917; that the re-assessment made during the year 1920 did not affect the plaintiff's property and only affected a small portion of land within the district due to changes in the roads, placing certain lands in zones close to said roads and other lands in the more distant zones.

[fol. 30] This defendant alleges that for more than seven (7) years after said original assessment of benefits was made, no action was taken by plaintiff to contest same; and that the plaintiff is now estopped at law to contest the validity of said assessment.

Defendant alleges that in accordance with the terms of the Act creating the district and the amendatory Act thereto, any property owners aggrieved by the action of the Board of Assessors may take an appeal to the Commissioners of Highway and Bridge District within thirty (30) days, and any property owner thus aggrieved may take an appeal from the decision of said commissioners to the County Court of Miller County within thirty (30) days after the decision of said commissioners.

Defendant alleges that no appeal was taken from said assessment to the Commissioners of Miller County Highway and Bridge District, and no appeal was taken from any decision of said commissioners of said Miller County Highway & Bridge District to the county court of Miller County, Arkansas; that the plaintiff has not pursued or attempted to pursue its remedy at law to obtain redress and relief from the assessment complained of and that said plaintiff has no standing in a court of equity and its bill should be dismissed.

This defendant alleges that the time within which any suit or action might be brought by the plaintiff to contest the validity of assessment of benefits against its property has long since expired and that the plaintiff is barred from bringing any action at law or in equity to contest said assessment of benefits.

This defendant specially pleads the bar of the statute of limitation of the general law of the State of Arkansas, and of the special limitation applicable to the assessment of benefits under the special acts creating this highway district and state that the plaintiff's bill should be dismissed under this plea of limitation and prescription.

Wherefore premises considered this defendant prays that the bill of the plaintiff be dismissed for want of equity, in that the assessment complained of is made against real estate and not against personal property of the plaintiff, and for the further cause that the plaintiff had a full, adequate and complete remedy at law and failed to pursue said legal remedy, and for the further cause that by its failure to take [fol. 31] any action to contest the validity of said assessment, plaintiff is estopped to now bring this action and for the further cause that the said assessment of benefits has been ratified and confirmed by the Legislature of the State of Arkansas and that no contest of such ratification was brought by plaintiff within seven (7) years thereafter; and for the further cause that the time within which the plaintiff's action should have been brought has long since expired, and the plaintiff is barred by the limitations set forth in the above mentioned act and limitations of the law of the State of Arkansas from bringing any action in law or equity to set aside the assessment complained of.

And this defendant prays that with the dismissal of plaintiff's bill this defendant be granted its costs in this action expended and for all other and further equitable relief in this cause.

Miller County Highway & Bridge District, by Henry Moore, Jr., Solicitor and Counsel.

I hereby certify that the foregoing answer is in my opinion well founded in point of law.

Henry Moore, Jr.

In United States District Court

Findings of Fact and Law—Filed July 2, 1925

This cause having been submitted to the court upon the pleadings, oral and written arguments of counsel, and the court being now well and sufficiently advised in the premises, doth find:

1. That the construction of the highway has not added anything and will add nothing to the value of the property of plaintiff taxed for its construction and maintenance.

2. The construction of the highway of defendant has not added and will not add anything to the revenue which is obtained by plaintiff by the transportation of oil through its pipe lines.

3. The levy of a tax of $5,000.00 a mile upon plaintiff's right of way or pipe line is not laid upon the same plan that is followed with regard to other lands in the district.

4. The levy of $5,000.00 a mile is palpably arbitrary.

[fol. 32] 5. The alleged benefit to plaintiff's property by the construction of the highway is speculative and conjectural.

6. Plaintiff is not estopped from maintaining this suit.

7. The Act of the Legislature of Arkansas purporting to validate generally the levy of the tax made by the defendant upon the property in the District is not effective to validate the levy upon plaintiff's right of way and pipe line, because as to plaintiff's property, such levy is arbitrary.

Frank A. Youmans, Judge.

In United States District Court

Amendment to Finding of Fact No. 3—Filed August 15, 1925

Upon motion of plaintiff, of which motion defendant has had due notice, finding of fact No. 3 of findings of fact and

law heretofore filed in this cause on July 2nd, 1925, is amended to read as follows:

The levy of a tax of $5,000.00 a mile upon plaintiff's right of way, the pipe line and telegraph and telephone wires and lines in the Miller County Highway and Bridge District, is not laid upon the same plan that is followed with regard to other lands in the district.

Frank A. Youmans, Judge.

In United States District Court

[Caption omitted]

Decree—September 14, 1925

This cause having been submitted to the court upon the pleadings, oral and documentary evidence, and the oral and written arguments of Arnold & Arnold as counsel for plaintiff and Henry Moore, Jr., Counsel for defendant, on April 21st, and 22nd, 1925, and the court on this 14th day of September, 1925, being well and sufficiently advised in the premises, doth find:

1. That the construction of the highway has not added anything and will add nothing to the value of the property of plaintiff taxed for its construction and maintenance.

[fol. 33] 2. The construction of the highway of defendant has not added and will not add anything to the revenue which is obtained by plaintiff by the transportation of oil through its pipe lines.

3. The levy of a tax of $5,000.00 a mile upon plaintiff's right of way or pipe line and telegraph and telephone wires and lines in the Miller County Highway and Bridge District is not laid upon the same plan that is followed with regard to other lands in the District.

4. The said levy of $5,000.00 a mile is palpably arbitrary.

5. The alleged benefit to plaintiff's property by the construction of the highway is speculative and conjectural.

6. Plaintiff is not estopped from maintaining this suit.

7. The Act of the Legislature of Arkansas purporting to validate generally the levy of the tax made by the defendant upon the property in the District is not effective to validate the levy upon plaintiff's right of way and pipe line, because as to plaintiff's property, such levy is arbitrary.

The Court is of the opinion and finds that the relief prayed for by the plaintiff in the bill filed herein, should be granted.

It is, therefore, by the court considered, ordered, adjudged and decreed that the defendants should be and it is hereby restrained and enjoined from collecting or attempting to collect by enforcement of a lien upon its pipe lines, telegraph and telephone lines, any tax whatever on account of the alleged benefits assessed against the plaintiff's property, or on any future assessment of benefits, and that said defendant, its board of commissioners, board of assessors, their successors in office, its agents, servants and employees of said Miller County Highway & Bridge District should be and they are hereby perpetually enjoined and restrained from levying any tax or assessment against the pipe lines, telegraph and telephone lines of the plaintiff under the provisions of Act No. 153 of the Acts of the General Assembly of Arkansas for the year 1915 and Act No. 15 of the Acts of the General Assembly of Arkansas for the year 1917, and they are hereby perpetually enjoined and restrained from attempting to enforce collection of any tax under the chancery proceedings provided for in the said Acts or any interest or penalty thereon and the alleged assessment of bene-[fol. 34] fits of $5,000.00 per mile upon the plaintiff's pipe line and telephone and telegraph lines and wires were hereby enjoined, cancelled and set aside and held for naught and it is further ordered that plaintiff have and recover of and from the defendant all its costs in and about this cause expended and that it have execution therefor.

Frank A. Youmans, Judge.

In United States District Court

Order Allowing Time to File Approved Statement of Evidence—October 21, 1925

This October 21, 1925, on motion of the defendant by Henry Moore, Jr., its solicitor, it is ordered that defendant

be allowed sixty days from this date in which to file an approved statement of the evidence upon its appeal in the above entitled cause.

Frank A. Youmans, Judge.

In United States District Court

Order Further Extending Time to File Statement of Evidence—November 26, 1925

This November 20, 1925, on application of the defendant by Henry Moore, Jr., its solicitor, it is ordered that the time for filing approved statement of the evidence upon its appeal in the above entitled cause be and is hereby enlarged and extended to February 1, 1926.

Frank A. Youmans, Judge.

In United States District Court

Order Further Extending Time to File Statement of Evidence—January 25, 1926

This January 23, 1925, on application of the defendant by Henry Moore, its solicitor, it is ordered that the time within which the defendant may file the approved statement of evidence for the purpose of its appeal herein be and is hereby extended to February 12th, 1926.

Frank A. Youmans, Judge.

[fol. 35] In United States District Court

Approved Statement of Evidence—Filed February 9, 1926

Caption

Be It Remembered That on this 21st day of April A. D. 1925, the above cause coming on for hearing before the Honorable Frank A. Youmans, Judge, presiding, the plaintiff

being represented by its attorneys Arnold & Arnold and H. C. Black, Esquire, and the defendants being represented by their attorney Henry Moore, Jr., Esquire, the following proceedings were had:

T. B. Morris, a witness sworn on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. David Arnold:

Q. Please state your name.
A. T. B. Morris.
Q. Where do you live?
A. I live in Texarkana, Texas; bookkeeper of the Texarkanian.
Q. How long have you been connected with the Texarkanian and in what capacity?
A. About twelve years as bookkeeper and general record keeper.
Q. I will ask you if that is a daily newspaper and has been for that period of time published in Texarkana, Arkansas?
A. Yes, sir.
Q. I hand you here copy of notice that bears the name of Louis Joseph and ask you if that was published in your paper?
A. This is the same notice that was copied out of the paper and it was published in 1920 on the 24th of July in the daily Texarkanian.

Mr. Arnold: I offer that in evidence.

Said notice identified as Exhibit A, being in words and figures as follows:

"Ex. A—Notice of Filing of Assessment of Benefits

Notice is hereby given that the Assessors of Miller County Highway & Bridge District have deposited the reassessment list of the lands, railroads, street railways, gas and electric lights, water, tram roads, telegraph, telephone and pipe lines and all other franchises of whatever descrip-

tion in any way connected with the realty in said district, with the County Clerks of Miller county and Hempstead [fol. 36] county, Arkansas, showing the amount of the betterments opposite each piece of property. All persons and corporations having any interest in the lands, railroads, street railways, gas and electric lights, water, tram roads, telegraph, telephone and pipe lines and all other franchises of whatever description in any way connected with the realty in the district as in said list described are hereby notified to appear before the Board of Assessors at the office of Miller County Highway & Bridge District in Rooms 436 and 437, in the State National Bank building in the City of Texarkana, Miller County, Arkansas, on the 26th day of August, 1920, and present complaints, if any they have, against the assessment of their property, or of the assessment of any other property in the district.

Given under my hand as Secretary of the Board of Commissioners and the seal thereof on this 24th day of July, 1920.

Louis Joseph, Secretary of the Miller County Highway & Bridge District. (Seal.)"

Q. Was that notice published on any other day except those two days?

A. Not according to the records.

Q. What was the circulation of the Daily Texarkanian at the time of the publication?

A. It was between 2,200 and 2,500.

Q. What was the circulation of the weekly Texarkanian at that time?

A. Approximately 1,800.

Q. What was the territory served by that paper, or what was the circulation?

A. Do you mean the local circulation?

Q. Yes.

A. Well, I don't know about the division of it.

Q. Did you have any circulation outside of Miller and Bowie Counties?

A. Not a very large circulation.

Q. Did you ever have any circulation in Independence, Kansas, or in the State of Kansas?

A. Not practically any. It would not be over one or two.

Q. Did you have any in the City of Shreveport?

A. Possibly not to exceed a dozen.

Q. I will ask you if the notice was published by the Assessors of that district about April 29, 1916?

[fol. 37] A. I located that, yes, I offered that from the files. It was published April 29th and May 6th.

Q. What was the circulation of the paper at the time of the publication of this?

A. Well, it was some less. It was in the neighborhood of two thousand.

Q. Was the territory served by the paper at that time about the same?

A. Practically the same; the variations would be principally in the local circulation.

Q. Are the Prairie Pipe Line Company, or any of its officials, subscriber to your papers at any of these two dates?

A. I couldn't be positive of that. I don't think so, just to state from memory.

Cross-examination.

By Mr. Moore:

Q. You state the Texarkanian is a paper that is generally published and distributed throughout Miller and Bowie County, and the territory adjoining the City of Texarkana, do you?

A. Yes, sir.

Q. That paper is sold on the trains, is it not?

A. Not in a regular way.

Q. You know that at times it is sold on the trains?

A. Well, it has been just at a few times at very short intervals.

Q. You don't pretend to remember or know all of the subscribers you had during the year 1920?

A. No sir, not all of them.

Q. There might have been papers that went into Kansas, Missouri or New York, that you don't know about?

A. Well, at that time I had charge of the out of town circulation. I could be positive from the records.

Q. But I mean as you remember it now without the records?

A. I couldn't state, no.

Q. Don't you know as a matter of fact that you and practically every one at various times take newspapers having articles of interest and forward them to parties outside of the state?

A. Yes sir, I do.

Q. Isn't that done frequently with the Texarkanian?

A. I would suppose so.

Q. Don't you know it is very frequently sent to Europe when we are over there traveling?

A. Yes sir.

Q. And to Chicago and different cities?

A. Yes sir.

[fol. 38] Q. During the year 1920 did you know a Mr. Hillford who lived here and was the manager of the Prairie Pipe Line Company?

A. Yes sir.

Q. Do you know whether or not he ever read the Texarkanian?

A. He was a subscriber for the Texarkanian. I couldn't say just when, but he has read it and has been a subscriber to it.

Q. And he subscribed for it to your knowledge while he was here?

A. Yes sir.

Q. Do you know whether he was general manager of the Prairie Pipe Line Co. at that time?

A. No sir, I don't.

Q. Do you know that he was connected and employed by the Prairie Pipe Line Company?

A. I know that he was connected with some pipe line company.

Q. You knew that he lived at Mandeville?

A. Yes sir.

Q. And had an office here in the State Bank building?

A. Yes, sir.

Q. Did you not, during that time, send certain of your papers to the Post Office at Mandeville, Arkansas?

A. Well, the weekly, quite a few of the weekly papers went to Mandeville.

Witness excused.

DAVID ELKINS, a witness sworn on behalf of the plaintiff, testified as follows:

Direct examination:

Q. Mr. Elkins, you are the County Clerk of Miller County, Arkansas?

A. Yes, sir.

Q. I will ask you if you have in your custody the original assessment of benefits for Miller County Highway and Bridge District?

A. I do not.

Q. Do you know where it is?

A. I do not.

Q. Who was the last person to your knowledge that had it in possession?

A. I couldn't say positively whether I ever saw the instrument or not.

Q. Is there any record showing when that book was filed in your office.

A. Not that I can find.

Q. There was a re-assessment of the benefits for that district from July 4, 1920. Is that book in your office?

[fol. 39] A. I haven't looked for that of the late date; I couldn't say positively; I don't know whether it is or not.

Q. Mr. Elkins, are you familiar with the boundaries of Miller County Highway and Bridge District?

A. I might have an idea of them, but I might not state exactly the boundary.

Q. Are you familiar with the territory embraced in that district?

A. Yes.

Q. What sort of territory is it as to being improved or unimproved?

A. Well, there is some improved land and then there is a vast acreage of unimproved.

Q. Are there houses built throughout the district?

A. Considerable.

Q. And there is a good deal of land in cultivation and a good deal that is not?

A. Yes sir.

Cross-examination.

By Mr. Moore:

Q. Where did you work during the year 1915?
A. I was working on a farm.
Q. And where during the year 1916?
A. I was on a farm.
Q. What year did you enter the County Clerk's office of Miller County?
A. It was 1919.
Q. You were there as Deputy Clerk at that time?
A. Yes, sir.
Q. You are now the elected and serving County Clerk?
A. Yes, sir.
Q. Then of your own knowledge you don't pretend to say that there was or was not an assessment list filed during the years 1915, 1916 or 1917, or any year prior to 1919, do you?
A. I couldn't say. I don't remember whether I ever saw the original assessment of benefits on file.
Q. What I meant is you were not in the office?
A. No, I was not in the office prior to 1919.
Q. And you don't remember whether you have seen it since you have been there?
A. No sir.
Q. But your testimony is not that there never has been one filed?
A. I understand one has been filed, but I don't know of my personal information.
Q. You can't find any there?
A. I have not been able to locate it.

Witness excused.

[fol. 40] Milton Oats, a witness sworn on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Arnold:

Q. I hand you here the original papers, Mr. Oats, in what was Chancery cases in Miller County, Arkansas, Nos. 446

and 703, against the Collector of Taxes of Miller County, Arkansas, and will ask you if you identify those as being the original papers in this case?

A. They are.

Mr. Arnold: I offer them in evidence with leave to have copies made and furnished. I will state these are injunction suits brought in Miller County to enjoin the collection of taxes.

Mr. Moore: I have no objection on that ground. I do not know what the object of this is, Your Honor. That was before this act that the county and state taxes could not be received without the payment of the other taxes. We all know in case that went up and settled by the Supreme Court of Arkansas, it was settled that a collector could receive state and county taxes without receiving any road tax. That being the law, I do not know what the object is.

The Court: Very well; they may be introduced, but I think it is a bad practice to introduce the original papers from another court. There ought to have been copies made it seems to me.

Mr. Arnold: Mr. Moore's statement, Your Honor, I think is correct with reference to what happened, and therefore it would be unnecessary, I think, to put all those papers in evidence if Mr. Moore will follow up what he has suggested and allow it to go as a short statement of what these papers are, and the result of the cases in the injunction that was granted by the Chancery court of Miller County, enjoining him from refusing to take the general taxes without requiring as a condition that this special tax should be paid. That was the object of the suits, and that was the result of the suits. One of them went to the Supreme Court and the judgment of the Chancery Court was affirmed in issuing an injunction against Mr. Eason. I think there is no dispute as to what happened and if Mr. Moore is willing to do that, we will just let our statements go as facts, in reference to those cases, without introducing the whole record. This testimony goes on the question of estoppel that is pleaded, that these payments having been made previous [fol. 41] to this time, they are compulsory, but at this stage these suits being filed the pipe line company conceived the

idea they were not compelled to do it and they brought these suits.

Mr. Moore: I would say that copies of the final decrees in each of those cases may be filed in this court to show the date of the decree.

Th Court: Very well; do that.

It is agreed that in lieu of copying in full in the record the decrees referred to that the following statement may be placed in the record showing the contents thereof:

The Prairie Pipe Line Company tendered to A. J. Gurley, the then Tax Collector of Miller County, Arkansas, all general taxes for the year 1919 and improvement district assessments extended against the real estate owned by said company, but the collector refused to receive the same unless the company would also pay the amount of the assessment in favor of Miller County Highways & Bridge District, basing his action on Section 10 of Act 153, of the Acts of 1915, and Section 11, of Act 16, of the Acts of 1917, providing in substance that if the collector shall fail to collect the road taxes along with other taxes, he shall be subject to a penalty of $100.00 in each instance where he collects general taxes and fails to collect the assessments in favor of Miller County Highway & Bridge District. The Prairie Pipe Line Company instituted suit to Mandamus the Tax Collector to receive the general taxes and assessments on real estate extended against its property, and the mandamus was granted by decree, dated April 10, 1920, in the case of Prairie Pipe Line Company vs. A. J. Gurley, the then Tax Collector of Miller County, Arkansas. The Prairie Pipe Line Company also offered to pay all general taxes extended on the tax book for the year 1920 and tendered the amount of such taxes to Fincher Eason, the then collector of Miller County, but he refused to receive the same, basing his action on the same ground; and on April 9, 1921 a decree was rendered in the Chancery Court of Miller County, requiring him to receive the same. An appeal was taken from the decree to the Supreme Court of Arkansas, and being found correct it was affirmed. See Eason Collector vs. Prairie Pipe Line Company, 234 S. W. 165.

LOUIS JOSEPHS, a witness sworn on behalf of the plaintiff, testified as follows:

[fol. 42] Direct examination.

By Mr. Arnold:

Q. Please state your name?

A. Louis Josephs.

Q. What connection have you with the Miller County Highway & Bridge Improvement District?

A. Secretary, Board of Commissioners.

Q. How long have you been acting in that capacity?

A. I have since the creation of the district under the original act of 1915, and then under the separate acts of 1917.

Q. I will ask you if you have got the original assessment of benefits for that road district?

A. I have. This is the original assessment of benefits.

Q. Is this the one that I examined?

A. That is the one.

Q. Does this bear any marks, filing marks, with the county clerk?

A. No, it doesn't. The filing marks have been cut out.

Q. How do you account for that?

A. I don't account for that. I found this book in Mr. Morris Sanderson's office. I can't account for that and I don't undertake to account for that, but this is the original assessment book.

Q. I will ask you to state how you know?

A. Because this book was originally prepared in the office of Mr. John Thomas, who was employed by the Board of Commissioners to make the book. And this is the book that Mr. John Thomas made, and this is the book that was filed. I have studied about this a great deal. I will say that this is the book that has the filing mark cut out.

Q. How long has the book been in your possession?

A. Off and on the last week or so. I have seen it in Mr. Moore's office, and one time I saw it in Mr. Sanderson's.

Q. Did it bear any filing marks?

A. Not within the last month or so.

Q. Who filed it originally?

A. The Board of Commissioners.

Q. How do you know?

A. The law says—I will say, I don't know.

Q. I will ask you to open the assessment made by the Board of Commissioners on the property of the Prairie Pipe Line Co. and read what it says?

A. Prairie Pipe Line Co. valuation of poles, pipe, wire, plant, trackage, etc. in the district $59,340.00.

[fol. 43] Q. Isn't that tankage?

A. Tankage instead of trackage.

Q. Is there a comma after poles?

A. Yes.

Q. What is the assessment of benefits against that property?

A. $59,340.00.

Q. The valuation without the improvement was what?

A. $59,340.00.

Q. The total benefits?

A. A. $59,340.00.

Q. And the value with improvements was what?

A. $115,680.00.

Q. What is this figure over here under the head of benefits?

A. I don't know.

Q. Well, it speaks for itself.

Mr. Moore: Isn't that the amount that was collected the first year?

A. Possibly so, Mr. Moore. I would not say as to that. I expect that is.

Q. State what that figure is?

A. $359.60.

Q. Is that assessment book verified by the affidavit of the Board of Assessors?

A. Well, it does not show so.

Q. Is it signed?

A. No, because I stated while ago, all of that has been cut out.

The Court: Did you ever see the leaves that had been cut out?

A. Absolutely.

Q. Where was that?

A. I can't account for that.

The Court: When you saw them were they in the book?

A. Yes sir, when the book was first made.

Q. Who had the book?

A. In the County Clerk's office and in my office. It was in my office before it was filed with the County Clerk and after it was filed with the County Clerk I saw it there several times. I never took it away from there. The next I saw it, it was in Mr. Sanderson's office.

Q. Just about a week ago?

A. Oh no, I had this book out of his office fully six months ago.

Q. Six months ago?

A. I will say about that time.

[fol. 44] Q. How many leaves have been taken out of the book, Mr. Jo-ephs?

A. Well, it looks like there have been at least two, Your Honor.

Q. Are the others numbered consecutively?

A. The last number that is not taken out is 296, and it does not show that there is anything missing but two pages.

Q. I will ask you if you have the minute book of the directors of that district?

A. Yes, sir.

Q. Can you tell when the bonds were sold, and the dates of their sale?

A. I can from that record.

Q. I will ask you to answer that.

A. The first bond issue of $223,000.00 was contracted for and a mortgage placed to secure said bonds was entered in my record on the 5th day of December, 1916.

Q. Entered in full, verbatim?

A. Yes, sir; and was approved by the approving attorneys, every detail included. That was when that first issue was sold and the pledge recorded. My recollection now is Your Honor, that when this case got into litigation with reference to the separation of the bridge from the road, that the bonds were not taken and delivered until that case was settled.

Q. When was it delivered?

A. Along in 1917 after all litigation was over, and I think the act had been separated; that issue was then taken up and another issue of $177,000.00 added to it so as to

make the total $400,000.00, and the first issue was re-sold in the second pledge, included in the $177,000.00 of the second issue. That was done on March 24, 1917, my recollection is, and I gave you a memorandum on that, that on March 30, 1917, the $223,000.00 of the original issue were acknowledged, that is, the money was delivered to the Board on March 30, 1917, and the second issue of $177,000.00 that is included in this particular pledge and mortgage, was acknowledged and the funds delivered to the district, as well as I remember on April 11, 1917; that soon after that—Mr. Arnold has the dates over there, that is, when that was done.

Q. Were there other issues of bonds?

A. Yes, there were other issues. Now there was another issue of $40,000.00 later on. I wanted to state, Your Honor, that the Board sold those bonds as the cash was actually needed to do this work, so as to save the interest for tax payers, and another issue was sold on August 5, 1919. That was for $40,000.00, my recollection is, and that $40,000.00 was delivered about the same time. I can get it exact from [fol. 45] my ledger account, but there was very little delay between the sale and the delivery and the cash delivery of the bonds. Then there was a fourth issue later on as the money was needed for $60,000.00, mortgage and pledge recorded on September 24, 1920, and the cash received very soon thereafter. There was a fifth and final issue of $40,000.00. That one was $60,000.00, the fourth one, and there was the fifth and final issue of $40,000.00 for which the mortgage and pledge was recorded in my record March 15, 1922, making a total of $540,000.00 that was issued in bonds through this various periods for the building of those roads. There are now outstanding $353,500.00 of all of those bonds, the difference having matured and being paid promptly at maturity.

Q. Have you the re-assessment of benefits that was made?

A. I might say here in connection with that first assessment, Your Honor, that that book right there was filed by the Board of Assessors in my office as Secretary of the District, with the Board of Commissioners on April 29, 1916. That is what my record shows.

Q. Do you know whether it is the one that was filed with the County Clerk?

A. Yes, sir; it is the same book.

Q. I say when?

A. No, no, I won't say as to that, but some time about that time.

Q. Do you know whether any notice was given as to filing?

A. I want to give you a little explanation. When you were talking to me yesterday I had it in my mind that I had nothing to do with the filing of this notice. I worked along there and Mr. Moore came in there and called my attention to the fact that that act does not require the secretary to file the notice. I then began to look into my records to refresh my memory, and when that happened last night I began to go into the matter further and get my mind clear on it. And I find that I issued vouchers to the Texarkanian in the amount of the publication of this notice, and I think it is here now.

Q. Have you a copy of the notice?

A. No, I haven't a copy of the notice. It may be that if I could go through my files that have been accumulating nearly ten years, I could find it, but it was given Mr. Sanderson as attorney for the district. I was just secretary and that may account for the book being with him in his office recently.

Q. Who prepared this notice?

A. I signed them and had them published, and later on paid for them by authority of the board.

[fol. 46] Q. Do you know what date it was set down for hearing?

A. No; that was entirely with the discretion of the Board of Assessors.

Q. Didn't your notice give the date?

A. You had the notice.

Q. I am talking about the notice of the filing of the assessment of benefits. My question is whether or not in your notice of the filing, what date was given that the Board of Assessors would meet and hear complaints?

A. The date that the notice was given. The notice set the first day of the hearing and the Board met on that day and then met and adjourned from day to day.

Q. You don't know what that date was?

A. No, sir, except what that notice says.

Q. Now Mr. Josephs, this first assessment of benefits was made under the original act creating the road and bridge district?

A. Yes, sir, that is a fact.

Q. I will ask you whether or not they ever collected any tax assessment on the basis of that first assessment?

A. There was one collection made in 1917, for the year 1916, but if my recollection is right, that wasn't done until after the Legislature had adjourned in 1917, and had ratified and approved it. There was an assessment of the benefits levied before the legislature of 1917 met, but there was no attempt made to collect it until after the Legislature had ratified that original assessment. I might be a litle wrong about that.

Q. This big book was an assessment of benefits to accrue by reason of building a road and bridge, wasn't it, under the authority of the original act

A. I rather think so, but it may have been that it was not intended to build any bridge. I don't think the Board intended to build that bridge.

Q. Now then, was a re-assessment of benefits made in 1920?

A. Yes, sir.

Q. Where is the assessment of benefits?

A. It is here; Mr. Moore has it.

Q. This is the re-assessment book that was made in 1920. Was that book made in substitution of this assessment of benefits, the first assessment of benefits.

A. It was made for a requirement of different benefits.

Q. Didn't that take the place of this one?

A. Well, yes, it follows that if a re-assessment was made the first one was out of order.

[fol. 47] Q. I will ask you to look at the record here of the assessment of benefits as to what it shows as to Prairie Pipe Line?

A. It says $60,000.00.

Q. I want you to read it just as it appears, Mr. Josephs.

A. Prairie Pipe Line Company, 12 miles pipe line and then Prairie Pipe Line Company deeded 12 miles T. eL. telegraph and telephone line, $5,000.00 per mile, total $60,000.00.

Q. Now I would like for you to show what is the assessment against the telegraph and telephone companies and railroads and how they were arrived at in the district.

Mr. Moore: Against what, Mr. Arnold?

Mr. Arnold: Against all utilities.

A. As to how they were arrived at, you will have to ask the Board of Assessors about that.

Q. I will ask you to look particularly at assessment against the Prairie Pipe Line Company. Is that assessment in the same writing as the other writing on that page?

A. This one is done with a lighter pencil.

Q. With a lighter pencil?

A. Yes, sir.

Q. How does the one above it and the one below it compare?

A. That is done by the same man.

Q. How do you figure that this one in the middle is in different pencil?

A. I don't know. I can tell you who made all those entries if you want to know. Mr. Sanderson made those figures as attorney for the Board.

Q. I want you to account for, if you can, for the fact that this assessment against the Prairie Pipe Line Company is written in heavier pencil than the other?

A. I can't account for it. I didn't think the writing—it appears to be a little darker.

Q. Then you say Mr. Sanderson put these figures in here?

A. I think so.

Q. What did the assessors do with them?

A. Well, it speaks for itself.

Q. Did Mr. Sanderson make the assessment of benefits?

A. No, sir; but certainly there is nothing to prevent him making these figures.

Q. Where did he get the figures?

A. He didn't get them from me.

[fol. 48] Q. You don't know whether he made them up himself or not?

A. I do not, sir.

Q. Mr. Josephs, you are familiar with the boundaries of this district?

A. No sir, I am not.

Q. In a general way?

A. All of the City of Texarkana, Arkansas, and what is said to be the north half of Miller county.

Q. Describe in general terms the character of lands in it?

A. Well, it has both hill and bottom lands.

Q. Is there improved and unimproved?

—. ——.

Q. Are there a good many houses built throughout the district?

A. A good many.

Q. Who are the assessors, Mr. Josephs?

A. Those who signed that list, George Conway, our present Mayor, and Mr. E. G. Anderson. The third member of that board was Judge Edwards.

Q. Why didn't he sign it?

A. I don't know. I wasn't there.

Q. Was it ever presented to him for signature?

A. I couldn't tell you.

Q. Who were the first assessors?

A. The same gentlemen.

Q. And they are still the assessors?

A. They are still the assessors; never have been removed, not resigned or fired.

Q. Mr. Josephs, I will hand you back again the original assessment of benefits above described, and will ask you in the back of the book how many sheets are torn out there?

A. I stated awhile ago the best I could tell it shows two.

Q. How many pages are torn out just preceding page 291?

A. Possibly three.

Q. Do you know what was on these sheets here?

A. No, sir.

Q. Do you know what was on the back sheets?

A. No, sir, I just know that on some of the sheets there was [there was] the certificate of the clerk.

Q. Wouldn't it be natural that it would be blank pages?

A. That would be a conclusion; I don't know what would be natural with one set of men compared with another set of men.

Q. But at the end of the assessment of benefits there is a skip of several pages before you get to the cut out leaves?

A. That is true.

[fol. 49] Cross-examination.

By Mr. Moore:

Q. You were the secretary of the board?

A. Yes, sir.

Q. You were not a commissioner and you were not an assessor?

A. No sir.

Q. You had no administrative duties, but purely your duties were to keep a record of what took place and carry out the orders given you by the commission?

A. Yes sir, Mr. Moore; that is all.

Q. Then in so far as these assessment books are concerned, save for the filing of them, the receiving and auditing and praying of the notice of the paper of the time filed, after they had been authorized by the Board you had nothing to do with them?

A. Absolutey nothing.

Q. You have testified that you have seen that book, this very identical book in the Clerk's office with the filing mark in same?

A. Absolutely, Mr. Moore; there is no doubt about that.

Q. That was about how long ago, when you saw it in the Clerk's office?

A. I will say it hasn't been less than five or six years ago.

Q. When I, Henry Moore, Jr. commenced to search for this book as as attorney for the road district, where did you tell me that you thought the book could be found?

A. In the office of Mr. M. E. Sanderson, former attorney for the board.

Q. Did you go down there and find the book there?

A. I did.

Q. And then it was brought up to my, Henry Moore's office?

A. Yes sir.

Q. And you next saw it in your office?

A. Yes sir.

Q. And since then it has been in my office?

A. That is correct, and yesterday I went and got it out of your office and gave it to Mr. Arnold.

Q. For his inspection?

A. Yes, sir.

Q. And of your own knowedge you can give no explanation of why those sheets are removed?

A. Absolutely none. When the book was first missed I immediately recalled that it was a book similar to the book used by the collector of taxes, County Clerk of Miller County, a large, heavy red book, and I began looking for that book and to my utter astonishment I found it in the office [fol. 50] of Mr. Sanderson long after it had disappeared and I was in doubt whether that was the original book. I knew that Mr. Thomas had made the original book for the Board of Assessors, and that is the book.

Q. Questions have been asked you in reference to an alleged difference in writing of the assessment of Prairie Pipe Line Company from other public utilities in the second assessment book filed during the year 1920. You as secretary had nothing to do with the making up of that book?

A. No sir, none at all.

Q. Simply say that the notice was published?

A. And when the bill was presented by the Texarkanian, they were allowed by the Board and I issued vouchers and paid for them.

Q. You don't know, or can't explain whether or not there was a different pencil?

A. No sir; I used two pencils on my docket this morning, one dark and one that didn't write so heavy.

Q. You have been secretary of the Board ever since its organization?

A. Yes, sir.

Q. Did the Prairie Pipe Line Co. ever appear before the Board of Commissioners, or did they ever file any protest with you as secretary, against the assessment of benefits, the original assessment of benefits?

A. They did not.

Q. Did the Prairie Pipe Line Co. ever file any protest with you as the Secretary of the Board, or did they ever appear before the Board of Commissioners objecting or protesting against the second assessment of benefits?

A. They did not. The only thing I ever heard of them doing was to enjoin the collector from forcing them to pay the road tax without,—or rather making the collector accept

the general taxes without excepting the road and bridge taxes. That is the first thing I heard of their contention about this district.

Redirect examination.

By Mr. Arnold:

Q. What right did Mr. Sanderson have to that book?
A. I couldn't tell you; I don't know why he took it.
Q. Did you file this first assessment book in person?
A. With whom?
Q. The County Clerk?
A. I don't recall; I might have done so, though I would rather say I did not.
Q. Did they have a meeting on objections?
[fol. 51] A. Not in my office. I wasn't there. I know they had some hearings.
Q. Now then, Mr. Josephs, who filed this second assignment of benefits with the County clerk?
A. I will have to give you the same answer I did with the first.
Q. Did you file it?
A. I might have done so.
Q. How long have you had it?
A. The second one I went and got from the County Clerk's office myself. It came about in this way: A lot of tax payers would go to the County Clerk and want information about the assessment, and the County Clerk would invariably call me on the telephone and would ask me about those different things, and I said to him, "Mr. Elkins, the only way I can settle those things is to have that assessment book before me. If you will let me have that assessment book, I will undertake to answer those inquiries." He says: "I will be glad to do that; come and get it" and that is how that book got into my office.
Q. How long has it been in your possession?
A. I will say about a year and a half. My recollection is that that occurred soon after the taxes for 1922 were being collected in 1923.
Q. Now then, it was filed July 24, 1920?
A. Yes sir.
Q. How long did it stay up there at that time?

A. So far as I know, it stayed until I got it.

Q. Did they have a hearing on objections?

A. Mr. Arnold, I tell you I was not there. I know the Board of assessors were at the court house for the purpose of having a hearing.

Q. This notice says they were going to hold a hearing in the State National Bank?

A. Maybe that is where they heard it. I can't recall every little iota that happened five or six years ago.

Q. You don't know that you filed either one?

A. No sir.

Q. You don't know how long that stayed there?

A. Except that second one, it was there from the time it was filed until I got it, between a year and a year and a half ago.

Recross-examination.

By Mr. Moore:

Q. Certain questions have been asked you about why Mr. Morris Sanderson had the book. What position did he occupy?

[fol. 52] A. He was attorney for the road district from the organization of the District until the completion of the road and the acceptance of the construction work and quit. There was nothing to do with the local representation, and I think at that time he voluntarily left the Board as there was no need of having an attorney locally employed. He has done some work for the Board off and on since but not lately.

Q. There was no friction between the Board and Mr. Sanderson?

A. Not a bit in the world.

Q. Was not Mr. Sanderson during that same time, the agent for service of the Prairie Pipe Line Company?

Mr. Arnold: We object to it, Your Honor.

The Court: I don't know how Mr. Josephs could know anything about that.

A. During Mr. Hillford's administration of the general working of the Prairie Pipe Line here, Sanderson was his attorney.

Q. Questions have been asked you whether there were any hearings of intersted parties under this second assessment, the 1920 assessment of benefits; did not Mr. Tom Webber, Attorney, of this city then living, appear before the Board of Commissioners representing the Two States Telephone Co. and present a petition?

A. He did.

Mr. Arnold:

Q. I thought you said you were not there?

A. Mr. Moore has asked for the Board of Commissioners.

Q. Did not Mr. David Arnold, representing the Southwestern Gas & Electric Company, appear before the Commissioners requesting certain reductions?

A. He did.

Q. Did not I, Henry Moore, Jr. representing certain parties, appear before the Board of Commissioners requesting certain reductions?

A. You did.

Q. Where were [were] those hearings held?

A. In my general office and the Miller County Highway & Bridge District.

Q. In the State National Bank Building?

A. Where the Board regularly meets, and where I have an office jointly with them.

Redirect examination:

Q. Has the Prairie Pipe Line Co. paid the taxes to this district?

A. They have not paid it to me.

[fol. 53] Geo. T. Conway, a witness sworn on behalf of the plaintiff, testified as follows:

Direct examination.

By. Mr. Arnold:

Q. Is your name Geo. T. Conway?

A. Yes, sir.

Q. Are you an assessor for Miller County Highway and Bridge District?

A. I was, and am.

Q. How long have you served in that capacity?

A. Since the district was started.

Q. And the other two assessors were E. G. Anderson and J. C. Edwards?

A. Yes sir.

Q. I hand you herewith what is said to be the original assessment of benefits and will ask you first to state how you arrived at the assessment upon lands without the corporate limits of Texarkana?

A. In making up this assessment, it was new to all of us, and we got all the information that we could from everybody, and finally we determined that the most equitable and fair way to make these assessments would be in zones outside of the city, and we found that no land would be over from three miles, or if it was more than three miles it would not be benefited. We made zone one within a mile of the road, zone 2 within 2 miles of the road, and zone 3 three miles and beyond of the road.

Q. What benefits were extended against the lands within these respective zones?

A. The first assessment?

Q. Yes.

A. Well, I couldn't tell unless I could see the records on that. The assessments were twenty, twenty-five and thirty.

Q. You mean $30.00 per acre in the first zone, $25.00 per acre in the second, and $20.00 in the third zone?

A. Yes sir, I do.

Q. You did not take into consideration the value of the land itself, but simply its location with reference to the road?

A. We thought that the benefits were all due to the location as to the road, and not the quality of the land.

Q. Did you take into consideration dwellings?

A. Only to a limited extent.

Q. To what extent?

A. None. Well, I would say none.

Q. Then an acre of land with a house on it was assessed the same as an acre of land without a house on it?

[fol. 54] A. Yes, sir.

Q. Now there is a plenty of houses throughout this district?

A. Yes, sir.

Q. And a great part of the land is cultivated, and a lot of it uncultivated?

A. Yes, it is, all this north Miller County in which there is low land.

Q. It is a fact that your sole consideration was how far it was from the road?

A. The sole consideration as to what benefits would be derived as to the location of the land to the road.

Q. How did you arrive at the assessment of utilities in this district? I will ask you to look at the assessment of benefits against Prairie Pipe Line Co., what property is it against which the benefits was extended?

A. Valuation poles, pipe, wires, plants, tankage, etc. in the district.

Q. Do you know how many poles they had in there?

A. Well, I would judge—no, I couldn't say.

Q. Do you know how much pipe they had in there?

A. Well, they come into Miller County at Red River and went out of Miller County at the lower end.

Q. That is not all in the district?

A. No, sir; but they went clear through the district.

Q. Do you know how much wire they had in there?

A. Thay had a telephone wire.

Q. Don know what their plant was?

A. The plant was at Mandeville for pumping oil from Oklahoma to Louisiana.

Q. And so forth in the district, what was embraced in that?

A. That was anything I had left with regard to wire; anything else they might have that would be taxable.

Q. How did you arrive at the benefit that you extended against that property? Did you arrive at it with reference to its proximity to the road?

A. We did not arrive at that in regard to what the acreage they had, but we arrived at that as to the valuation of the pipe line, and the others, in accordance with the others in the district, the gas and electric company, etc.

Q. I do not understand how you arrived at that in your assessment that it was benefited to the extent of $59,340.00?

A. We figured that a pipe line and what they had there, would derive that much benefit from this road.

Q. How did you figure that, did you take into consideration where it ran?

[fol. 55] A. We took into consideration, Senator, all that we thought would have any bearing.

Q. I want you to name the elements.

A. The elements were these: We considered these people, the Prairie Pipe Line Company, their pipe line and their telephone line to their pumping station, and tanks, which was practically wholly within this district, would receive benefits from this road amounting to $59,340.00.

Q. Were those pipe lines in the ground at the time you made this assessment?

A. I think one of them was since this time.

Q. When?

A. A few years ago. The records would be the best evidence of that.

Q. Does that bear the handwriting of the assessment of benefits?

A. I would say that this is Thomas' writing.

Q. This isn't Thomas' writing here (indicating) is it?

A. No, sir.

Q. The assessment against Prairie Pipe Line Co. is not in this writing?

A. I couldn't say.

Q. You do not recognize that?

A. No, I don't.

Q. What did you do with that assessment of benefits after it was completed?

A. We filed it with the Secretary.

Q. With the Secretary of the District?

A. With the Secretary of the District.

Q. Did you give any notice?

A. Yes, notice was given and a great many meetings held.

Q. Where were these meetings held?

A. The meetings when we first started to get this district up, the meetings were held at Miller County Court house. We had numerous ones, some of them were indignation meetings, and we ironed the thing out the best we could, and I guess we had a dozen meetings with the different corporations including the Missouri Pacific.

Q. You in person, took it up there and filed with the County Clerk?

A. No, my recollection is, Senator, that we filed it with the Secretary of the Board and he filed it.

Q. Then did you go get the book and bring it back? When was it you heard objections?

A. When we went to the court house we had the book. Mr. Eason was County Clerk. I got him to give me that book. We were short of funds, we were having trouble and my recollection I got this book on account of it being similar [fol. 56] to the tax books, and we got J. H. Thomas to make a copy, and this is his writing, from the tax record.

Q. Mayor, when was the date set for hearing of objections on the assessment?

A. The notice would be the best evidence.

Q. Where did you meet?

A. In the Miller County court house.

Q. Did anybody appear before that meeting?

A. Quite a few, yes sir.

Q. Local people?

A. Yes, sir.

Q. Did the Prairie Pipe Line Company, or any of its officials appear there?

A. I don't remember. I remember there were several meetings up there.

Q. This then the original assessment of benefits is the assessment of benefits to accrue to the construction of the road and bridge provided for in the original act?

A. I don't think the bridge was taken into consideration. The bridge was never built under the act.

Q. But the assessment of the benefits was made under the original act?

A. Yes sir.

Q. And provides for the construction of the road and also a bridge?

A. Yes, sir.

Q. Were you ordered to make a reassessment in the road district?

A. I think after four or five years there was a reassessment made.

Q. By whom were you ordered to make that reassessment?

A. By the Board of Commissioners.

Q. I will hand you that assessment of benefits and will ask you how the lands in the act were assessed in your re-assessment?

A. Are you speaking of the country outside of the city?

Q. Yes.

A. Why, it seems to me like the assessment was the same.

Q. Was arrived at in the same manner?

A. Yes, sir?

Q. Solely with reference to the location?

A. Solely as to the benefits to be derived at from the construction of the road.

Q. Based solely on the proximity of the land to the road?

A. Yes sir.

Q. And no other consideration entered into it?

A. Not that I know of.

Q. Now, then, I will ask you to turn to the assessment of the utilities?

A. All right, sir.

[fol. 57] Q. Now, then, what is the valuation extended against the property of the Prairie Pipe Line Company for improvements, and what with improvements, and the total benefits?

A. Prairie Pipe Line Co. 12 miles pipe line and 12 miles telegraph and telephone lines, $5,000.00 a mile, or $60,000.00.

Q. That is the total benefits, is it not?

A. That was the re-assessment.

Q. What was the value of the property without improvements, that you were required under the law to set out in the assessment book?

A. This does not show here.

Q. But it does show as to all lands outside of the city?

A. Yes, sir.

Q. How was the benefits arrived at on all lands in the city of Texarkana?

A. On advalorem basis.

Q. How do you account for the different assessment of benefits against the property of the Pipe Line Company in this assessment and in the first assessment?

A. I imagine it was only a few hundred dollars difference, and possibly the few hundred dollars was taken in there for a matter of bookkeeping.

Q. Mayor, did you assist in assessing these utilities, or Mr. Sanderson?

A. I assisted in assessing, we got all the help we could. This was an entirely new thing in this country and we didn't know where we were.

Q. Morris Sanderson wrote all this sheet with reference to utilities, didn't he?

A. It looks like his writing. Morris Sanderson helped us.

Q. Mayor, isn't it a fact that you arbitrarily put down on this pipe line a lump sum per mile?

A. That is not a fact.

Q. How did you arrive at the benefits of $5,000.00?

A. Because we thought they were benefited that much.

Q. What did you base your opinion on?

A. Many things. We thought that a pipe line coming in, and a telephone line would be a greater benefit than a telephone line located where they didn't have a road. Another thing they had the pumping station and they would use the road in going to and from their work.

Q. The Prairie Pipe Line Co. owns certain lands out here at Mandeville?

A. I am not positive of that.

Q. The benefits were assessed against those lands just like any other lands?

A. Yes, sir.

Q. Mayor, did you file this book with the County Clerk? [fol. 58] A. My recollection is we filed it with Mr. Josephs.

Q. When did you next see it after that?

A. This morning.

Q. Well, did you have any hearings upon objections.

A. There was none to this assessment, that I know of.

Q. There was no objection filed by any persons?

A. Not that I remember.

Q. Did anybody have any notice of it?

A. Notice was given, I presume.

Q. Is there anything in this assessment book, Mr. Conway, to show what the valuation of the property of the Prairie Pipe Line Co. was without the improvements?

A. None.

Q. Is there anything to show what the value of the property was with the improvements?

A. There is a total valuation here given for the Prairie Pipe Line Co.

Q. That is the total assessed benefits, is it not?

A. Yes, sir.

Q. Is there anything to show what the value of the improvements is, with the improvement?

A. No, sir, there is not.

Q. Did you ever get any help from any Pipe Line Company, or people familiar with pipe lines to help you arrive at what benefits it would receive?

A. I never got any help from a Pipe Line Company. I knew Mr. Hillford quite well. My office was right next to him during his lifetime. I knew him quite well, and there was no complaint that I know of, from the Prairie Pipe Line Co. He was in and out of my office all the time. I used to shoot with him and hunt with him. There was never any disposition from the Prairie Pipe Line Co. except to pay these taxes.

Q. Mr. Hillford did not have any supervision over that?

A. I don't know.

Q. Has the Prairie Pipe Line Co. ever paid any assessment of benefits based on this assessment of 1920?

A. I don't know sir; I don't think they would if they could get out of it.

Q. Mr. Conway, I hand you back the assessment book of 1920 and will ask you what it shows as to the real estate owned by the Prairie Pipe Line Co. or the Prairie Oil & Gas Co.

A. Prairie Oil & Gas Co. southwest northwest, 40 acres, and the south part of the northwest of the Northwest, 31.5 acres.

[fol. 59] Q. What assessment of benefits were extended against it?

A. $1,200.00 on the forty acres and $960.00 on the 31.5.

Q. You reached that assessment of benefits in the same manner as you reached the assessment of benefits on other lands in the same district?

A. I recall no distinction.

Q. In arriving at the benefits upon real estate you did not take into consideration the use to which they were put, their present use or uses to which they may be put?

A. No sir.

Q. You are familiar with the line of pipe running through that district?

A. Not exactly.

Q. You know there is a line running through there?

A. In a general way.

Q. The lands under which that pipe line runs have been assessed in the same manner as other lands?

A. I think that is true.

Q. I will ask you to explain again how you arrived at the assessed benefits of property in the city?

A. It was taken on the ad valorem basis.

Q. Basis of valuation for county and state purposes?

A. Yes.

Q. And you found the benefits on land in Texarkana to the amount it was assessed for, for general state taxation?

A. Yes, sir.

Cross-examination.

By Mr. Moore:

Q. We have used here indiscriminately Prairie Pipe Line Co. who were the former owners of this particular property and the suit is brought, and we sometimes use the Standard Pipe Line Co. It is agreed between counsel that when referring either to the Prairie Pipe Line Co. or the Standard Pipe Line Co. it is referring to the identical and same property.

Mr. Arnold: Your Honor, that is true of the testimony introduced heretofore with reference to the Prairie Pipe Line Co. because the sale from the Prairie Pipe Line Co. to the Standard Pipe Line Co. took place in December, 1922.

The Court: It will appear in the record that the present plaintiff in this case is the successor of the Prairie Pipe Line Co.

Mr. Arnold: It will appear later, yes sir.

Q. Mr. Conway, you have testified that this book which I now have before me is the original assessment book made by [fol. 60] the assessors for the first time under the act of 1915, under the act creating the district?

A. Yes, sir; I am not familiar with the date, but that was the original assessment book that was made.

Q. Now you have further testified that that assessment book after it was made, was subscribed by the assessors and afterwards filed with the County Clerk?

A. My recollection is it was filed with Mr. Josephs who was Secretary.

Q. And by him filed with the County Clerk?

A. Yes sir.

Q. You have no knowledge and cannot explain why or how these leaves on which the names of the assessors were subscribed were cut out of the book?

A. No sir; I have not seen this book since filing and protests were taken care of until this morning when it was produced in evidence.

Q. Under the original act creating the district, section 7, the Board of Assessors after being appointed, were ordered to file with the Commission a list showing a description of the property in the district, the owners' names as they appeared from the last county assessment, the valuation of each lot or parcel of land, railroad, tram-road, telegraph, telephone and pipe lines, the valuation for the improvement [—] the road district; then they were ordered to show the benefit that was estimated to accrue to each tract of land. Had the assessors a copy of such act, and did they follow that in making out the assessment?

A. Yes, sir.

Q. This happens to be page 59. There first appears the owner's name, then a description of the land, then the value of the land without the improvement, then on this particular piece of land, $30.00, the benefit per acre, then the benefit to accrue from the road which is a forty acre tract of land, multiplied by thirty, $1,200.00. That is followed throughout in making all of the assessments of benefits under the act of 1915, was it?

A. That is correct, yes sir.

Q. The assessors did not, themselves, do the clerical work on this book?

A. No sir.

Q. They employed other persons to do that for them?

A. They employed J. H. Thomas.

Q. The assessors instructed him the amount of benefits to be assessed against each tract of land and saw that that was done before signing the assessment roll?

A. That is a fact.

Q. In making up that assessment you have stated the land was divided into zones one, two and three or more miles away from the road, and a benefit given of $30.00 to [fol. 61] the first mile, $25.00 to the second, and $20.00 to the third zone. That is correct is it?

A. Yes sir, that is right.

Q. In assessing property in the City of Texarkana, you have stated you took the ad valorem assessment and assessed a benefit of the amount for which city property was assessed for county and state purposes. That is correct?

A. That is correct, yes sir.

Q. Now turn to the page where the public utilities occur and see if you did not use the same method of assessing the public utilities that you did in assessing the value of the property in the city of Texarkana, that is, take the valuation for county and state purposes and assess a benefit equal to that valuation?

A. That is a fact, yes sir, the assessment was made without improvements, total benefits, and with improvements.

Q. Now do you know at that time that the Prairie Pipe Line Company had their pumping station and large expensive improvements on the land that they owned at or near Mandeville?

A. They did, yes sir.

Q. Turn to page 31 and read a description of the property there assessed to the Prairie Pipe Line Co. What was the acreage of the property assessed to the Prairie Pipe Line Co.

A. It is assessed in the name of the Prairie Oil & Gas Co. Southwest Northwest, section 1, Township 15, Range 28, consisting of 40 acres, and the south half,—I believe the description would read south of railroad. Northwest northwest, Section 1, Township 15, Range 28, 31.5 acres, without the improvements $900.00. The total benefits were $945.00, and with the improvements $3045.00.

Q. Now that land is within the first zone, is it?

A. Yes sir, it lies right on the improved road.

Q. And at what price per acre was it assessed?

A. Thirty dollars.

Q. Then with all the benefits on that land, it was assessed just the same as unimproved farm land?

A. It was; the first assessment.

Q. The first assessment?

A. Yes sir.

Q. Under the act of 1917, when the second assessment was made, it appears a different procedure was ordered by the legislature from in the first assessment. The assessors were ordered to show the lands of the district as they now appear on the county tax books, and also to show the railroads, gas and electric light, water, telephone, telegraph and pipe lines by the mile, and opposite each piece of property shall be placed the name of the owner and the amount [fol. 62] of the betterments. Did the assessors have before them the second act at the time of making this second assessment?

A. Yes sir.

Q. I will turn here to a page, 56, and will ask you if instead of showing the full improvements as required by the first act, in this second act you showed the name of the owner, the description of the property, the valuation without the improvement and the amount of the benefits to the property?

A. That is correct.

Q. At the time of making this second assessment had the roads in the district been built?

A. Yes sir.

Q. Did you take into consideration the changes in the roads from the way as originally laid out, and the way they were actually built, in making your new assessment for the district?

A. We did, yes sir. The roads as originally laid out did not conform to the roads as built and there were some that was in zone 3 that should possibly be in zone 2, and vice versa, and these readjustments were made so there were an equal benefit according to the zone as they were finally built.

Q. In making such reassessment of benefits did you, as in the former case, take the valuation for county and state purposes in the City of Texarkana and assess a benefit of an equal amount as to the assessment for county and state purposes as the benefit?

A. In the second assessment, yes sir.

Q. In assessing the lands just as in the first assessment, did you assess lands in zone one nearest the road at $30.00 and zone 2 at $25.00, and the third mile and over, zone 3, at $20.00, using the assessment for all lands in the zone?

A. We did, yes sir.

Q. Refer to page 258. Does there appear at page 258 the same two pieces in the name of the Prairie Oil & Gas Co., located at Mandeville, one forty acre tract and one 31.5 acre tract about which you have testified in the first assessment?

A. Yes, sir.

Q. Were those two tracts of land assessed just as other tracts of land in the same zone, to-wit: at $30.00 per acre as the benefit of said land?

A. Yes sir.

Q. One at $1,200.00 and one at $960.00, the 31.5 acre tract?

A. That is a fact.

Q. At the time you made that assessment in 1920 did the assessors know that there were improvements, pump houses, tanks and other fixtures part of the real estate on that prop-
[fol. 63] erty that made it worth probably many many times more than any other piece of property in the district?

A. Yes sir, that is a fact.

Q. And yet in making the assessment you followed exactly the same zone system you did with a piece of well improved farm land?

A. Yes sir.

Q. Refer to the page where the public utilities are assessed under the second act, as I have just read, ordered the assessment of these public utilities to be made by the mile, are the various telegraph and telephone companies and the Prairie Pipe Line Co. assessed by the mile?

A. Yes sir, they are assessed by the mile.

Q. It is shown that the two railroads, the St. Louis, Iron Mountain & Southern, and the St. Louis Southwestern are not assessed on it. The second act shows that a compromise agreement had been reached with those railroads by which they paid in a lump sum in lieu of assessments, which compromise agreement was ratified by the legislature. What was the amount of such compromise agreement, if you remember, paid by each of said railroads?

A. The Missouri Pacific paid $25,000.00 in cash; the Cotton Belt, I do not recall.

Q. I think you are mistaken. In order to refresh your memory I will ask you if it was not as shown by the act, $20,000.00 that the Iron Mountain paid?

A. It seems so there from the act, and my recollection was $25,000.00, and the reason why I got that, they had a section of land over here that they sold and I happened to buy the section of land and $25,000.00 was what I paid for it, and General Kinsworthy in making this trade, said: "We are turning over this section of land to get out of paying any more road taxes." I know we paid $25,000.00 cash for the land after they had paid the bill, and this section is the same and that is the way I got the idea.

Q. At the time you were making the first assessment of benefits was your office in the State National Bank Building?

A. Yes sir.

Q. And when you were making the second assessment your office was in the State National Bank Building?

A. Yes, sir.

Q. Was the office of the Prairie Pipe Line Co. at that time on the same floor that your office was?

A. Just next door to the east.

Q. You were acquainted with Mr. Hillford, the then manager of the company?

A. Very well.

[fol. 64] Q. Did Mr. Hillford know that this assessment of benefits was being made the first time?

A. Yes, sir.

Q. Did he know that it was the second time?

A. I couldn't distinguish between the time, but Mr. Hillford joked with me a good deal about it, not only in the office but around different places over the country when I would be with him. He was familiar with it, I am sure of that.

Q. In arriving at the way you would assess these benefits which you have already detailed, what investigation, or state what attempts did the assessors make to find out and arrive at the right, equitable and just methods of distributing the assessment over the land, the city property and the public utilities of the district?

A. Well, you know Mr. Moore, ten years ago we were not as familiar with improvement districts as we are now and when this act was introduced and passed the legislature and the commissioners were appointed and the assessors, we went to work and got all the local information and help that we could, and then we wrote all over the country asking for the information, and we went into it as thoroughly as we knew how, and after we sifted it down and had the different meetings and reconciled the different contending factions we adopted this method which we thought was fair and equitable, and I still think was one of the fairest and most reasonable ways in arriving at a benefit from the building of an improvement of this kind.

Q. Then after this investigation you decided that a different method [out] to be used against the country acreage property, the city property and the public utilities that had miles of tram-road, telegraph or pipe lines running through the district?

A. Yes, sir.

Q. After the notice was published both the first and second time letting all parties know that they could appear before the assessors if they had any complaint to make, did any parties appear before the assessors and discuss the amount of assessment and the amount of benefits with the assessors?

A. The first time we were continuously adjusting this, I would say for thirty days or six weeks.

Q. That was the first assessment?

A. Yes, sir.

Q. When the second assessment was made about how long were you adjusting it, if you remember?

A. I don't recall.

Q. Are you sure that parties had notice and did come before you and adjustments were made?

A. The proper notice was given, although you can get the records on that, but as far as remembering anybody coming before us on the second assessment, I don't remember.

[fol. 65] Q. On the second, you were in session as required by law, so they could come before you?

A. Yes, sir.

Redirect examination:

Q. When were you in session to hear objections?
A. I do not recall where the notice was given.
Q. It was in your office then?
A. I was at the State National Bank Building.
Q. Did the other assessors meet with you any other day?
A. The assessors came whenever I sent for them.
Q. Were you there all the day on the date you set down for hearing objections?
A. I don't think we stayed there all the time. After there was no objection for thirty minutes or an hour, we talked about the order and adjourned.
Q. Do you know of any assessment in Arkansas against a pipe line for a road of $5,000.00 a mile?
A. At that time I don't think there was any assessment.
Q. Did you ever hear of any road?
A. No, I don't know.
Q. Do you know whether there is any assessment as high as that in Arkansas now?
A. No, I think the assessment is very reasonable.
Q. You said something about this $5,000.00 per mile being the assessment for general taxation of pipe lines?
A. I didn't say that. I said this: Five thousand Dollars a mile was made in the 1920 assessment under that statute.
Q. You didn't mean it was based on any assessment for general taxation?
A. No.

A. B. Little, a witness sworn on behalf of the plaintiff, testified as follows:

Direct examination:

By Mr. Arnold:

Q. What position did you occupy during 1915 and 1917, official position?
A. I assisted the Tax Collector in collecting the revenue of Miller County.
Q. I will ask you to state whether you wrote these two letters to M. E. Vantuyl?

A. Yes, sir, I wrote them.

Q. Did you ever receive a reply from Mr. Vantuyl?

[fol. 66] A. Well, the office did. The office received a reply.

Q. Have you a carbon of that reply that your office received from Mr. Vantuyl?

A. Well, that seems to be a carbon copy.

Q. I am talking about a carbon copy of the one he wrote you?

A. That is what I am talking about.

Q. Do you remember whether there was such a letter that came to you?

A. From this copy I remember there was such a letter came to the office.

Q. This carbon copy I hand you as coming from the files of the Prairie Pipe Line Company. Do you know where the original of that letter is?

A. No, sir, I don't.

Q. Could you say whether or not it is lost, the original letter he wrote to you?

A. I don't know; I presume it is lost or destroyed or mislaid.

Mr. Arnold: I want to introduce these letters in evidence.

Mr. Moore: I wish to object to the introduction simply on the ground that it is immaterial to the cause. They are letters from that company showing they are over due. I do not think that it has any bearing on the case, neither do I see that it will harm the case except by encumbering the record.

Mr. Arnold: It is for the purpose of showing their first knowledge of this road tax, show after this first assessment had been applied and the time for appearing had expired. We will prove by another witness,—Mr. Vantuyl is dead, and this is the correspondence that passed between him and Mr. Little. I expect I had better ask Mr. Little one other question.

Q. Were you acquainted with Mr. Vantuyl?

A. I had met him several times.

Q. You may state whether or not he came to your office shortly before this first letter was written?

A. He did.

Q. Did you give him a statement of his taxes?

A. Yes, sir.

Q. Did they include this road tax?

A. No.

Q. Then state whether or not you called his attention to the fact by one of these letters that this road tax was collectible, and notified him of the road tax?

A. I had in the first letter there.

Q. And that was the purpose of writing that letter?

A. Yes, sir.

[fol. 67] Q. Did you subsequently receive payment from him for that tax?

A. Yes.

Q. Was this property assessed on the [the] personal tax book of real estate tax book?

A. My recollection it was on the personal tax book. That is the reason I had overlooked this item.

Mr. Moore: It appears that the object of this testimony is to show that these parties did not have actual notice. It has already been shown that Mr. Hillford, the local manager of the Pipe Line Company, did have notice from Mr. Conway, the assessor, that here was a road built as shown by the testimony, and as will be shown by the map, also here is the Cotton Belt and Iron Mountain Railways: here is the pipe line and all the improvements, so it couldn't have been possible for it to have been built without everybody connected with the Pipe Line Company know it was built. But over and above that in the famous House case that has just been decided, the contention was there made that Mrs. House had no notice that these roads had ever been built. The Supreme Court of Arkansas held, and it was sustained by the decision of the United States Supreme Court, the tax in rem against the property and not against the person, and therefore the property was bound whether notice had actually been received by the owner or not. So under that decision, until they show that no notice was given,—in fact, it is proven that notice was given and that the pipe line did not object: that nothing whatever was done or heard of it until this day, it would not affect the decision.

Mr. Arnold: If Your Honor please, Mr. Moore is getting a little in advance of the real points in the case. It is in

anticipation. Now with reference to Mr. Hillford, of course, we will show, as Your Honor remembers we showed in the other cases, that this company had no local office here whatever in the county, and we will show that Mr. Hillford was only an operating superintendent of this pumping station; he had nothing to do with the tax operations of the company, or with the taxes. We will show that. Now with reference to this other feature about notice being given, but no notice actually received, we have a case here decided by Judge Sanborn. I presume it has never been reversed, I know of no reversal of it. It is the case of Thornton vs. Road Improvement District No. 1,231 Federal, 528.

The Court: As I understand that case, the decision of the latter court was based on the provision of the act which gave a certain period within which proceedings might be [fol. 68] instituted to test the legality of the assessment. The suit was brought after that period had expired. As a matter of fact, the Court of Appeals then passed upon the question as to whether under the circumstances that particular provision was of such a character as that it could be held that it did not constitute due process of law, so far as those people are concerned. Now that is the way I understand that case. Upon that question I think these letters may be received in evidence. They will, of course, be taken into consideration with the testimony that you have already brought out, Mr. Moore, with regard to the superintendent, as testified to by Mr. Conway, and perhaps, Mr. Josephs.

"Ex. C, JKP

A. J. Gurley, A. G. Sanderson, Sheriff and Collector, Miller County, Texarkana, Arkansas

April 5, 1917.

Mr. N. E. Van Tuyl, Independence, Kan.

Dear Sir: To beginning to make up formal receipt for the Prairie Pipe Line Company, I discovered that in addition to the highway tax charged on the land owned by the company of $14.98 there is charged a highway tax upon them as a corporation the sum of $395.20 and is charged in with the other taxes.

I cannot see why I failed to see this charge in rendering you statement, but such is the case, and will have to be paid before I can mark the book paid.

Perhaps you understand, this charge is made upon the late law passed by the Arkansas legislature in 1915 creating the Miller County highway district and the Commissioners taxed your company amount above stated for this year.

I will hold the check and other papers sent in until you take this matter up with the company, so send check for $395.20 and receipt will be forwarded at once.

Yours very truly, A. J. Gurley, Coll., by A. B. Little."

[fol. 69] "Ex. D, JKP

The Prairie Pipe Line Company

N. E. Van Tuyl, Tax Commissioner

Independence, Kansas, April 9, 191–.

A. J. Gurley, Esq., Sheriff and Tax Collector for Miller County, Texarkana, Arkansas.

Dear Sir: I am in receipt of your letter of April 5th with reference to an item of $495.20 additional highway tax on corporations.

I am sorry that we did not get this in the other statement but it can be paid yet all right as soon as you send me a statement of same in detail.

I wish you would receipt the other just as it was sent in and then send me a supplemental statement of the other. Please let me know on what it is based, that is, the assessed value upon which bases, and the rate per cent of the levy.

If you have a pamphlet copy of the 1915 law referred to, I should be pleased to have it so that I can use it in connection with my explanation to the officers of the company.

With kindest regards, I remain,

Yours very truly, N. E. Van Tuyl."

For Mr. A. B. Little.

"Ex. E, JKP

A. J. Gurley, Sheriff. J. P. Few, Chief Deputy

Office of Sheriff Miller County, Texarkana, Ark.

April 11th, 1917.

Mr. N. E. Van Tuyl, Independence, Kan.

DEAR SIR: In reply to yours of the 9th inst. beg to say this charge is upon the personal book and is extended there against the personal assessment of the company.
[fol. 70] The cause this was overlooked by me is because this kind of charge is out of the ordinary way as it stands alone in one charge of $395.20 against the corporation as a highway tax. I do not know how the Commissioners figured it out, but they claim this is due by your company as a corporation, and the book can not be marked paid with this charge in it, as it is extended on one line.

I will therefore hold the other receipts and the check until you have time to have the company investigate it. I do not have a copy of the law, and could not find one for you around the court house.

There will be no penalty to the company by not paying this before now, so when you have investigated the matter out, send check for $395.20 and all receipts will be forwarded promptly.

Yours very truly, A. B. Little, D. C."

Q. I will ask you to state whether this is a statement that you had furnished of these taxes previous to this correspondence?

A. No that is not it.

Q. Is this the receipt that Mr. Gurley gave for the taxes, or for the corrected amount?

A. Yes, this is a receipt for the amount complained of in the first letter, $395.20, that we did not get in the former statement.

Q. Is that this highway bridge tax?

A. Yes.

Mr. Arnold: We ask the same privilege with that, Your Honor?

The Court: It will be received.

"Ex. F, JKP

P. P. L. Co. 1M-11-15. N. E. Van Tuyl, Tax Agt.

Approved. —— ——, Treasurer. —— ——, President.
Extension and footings correct. A. L. Strain.
Analyzed by E. F. Henry.
Approved. L. L. Dudley.

[fol. 71] The Prairie Pipe Line Company, Independence, Kansas

April 26, 1917. D85.

To A. J. Gurley, Sheriff & Tax Collector, Texarkana, Arkansas, Dr.

In his official capacity as Tax Collector in and for the County of Miller, State of Ark. who hereby officially acknowledges receipt of the several amounts of taxes mentioned herein, from the Prairie Pipe Line Company, Independence, Kansas, in full payment of the following state, county, township, school and other taxes levied and assessed against the following real and personal property of said company due for the year, of 1916, to-wit:

Items of property, rate	Assessed valuation	Tax	Total
Special Benefit Taxes in Miller County Highway Improvement district under Chap. 153 Laws of Arkansas 1915			
Property benefited belonging to The Prairie Pipe Line Co. assessed by Commissioners at	59340		
Total Tax will be 10% of said amount or for which 15 year bonds are issued by said Highway Road Improvement District	5934.00	5934.00	
1/15	5934.00		$395.20
Tax Reserve Acct. Ark. T. L. Advalorem		395.20	Audited

Please date and sign this receipt and return promptly with all papers attached. Signatures should be in ink.

Indexed. S. J. Slattery.

Received 4/10/1927, $359.20, in full for above account. A. J. Gurley, by —— ——.

6805. On reverse: Sub. No. 3, Voucher No. D 85. The Prairie Pipe Line Company. Apr., 1917."

[fol. 72] Q. Mr. Little, how long have you lived in Miller County?

A. Fifty-four years.

Q. What official positions have you held in the county?

A. Well, numerous ones. I was county assessor in 1884. I was County Clerk from 1902 to 1910, and I have been Deputy Tax Collector three or four times, I don't know how many more. I don't believe I was ever road overseer.

Q. Mr. Little, are you familiar with the boundaries in a general way of Miller County Highway & Bridge District?

A. Well, in a general way I am.

Q. Do you understand that that embraces the city of Texarkana and vicinity?

A. Yes.

Q. And also to the north and east to the Red River?

A. Yes.

Q. Are you familiar with the lands in the district?

A. Well, fairly so.

Q. I will ask you to state whether or not the district is thickly settled farming country?

A. Yes, near Texarkana, of course, it is a little more thickly settled than further east or on down to the bottoms. It is fairly well settled with farms throughout.

Q. I will ask you to state what roughly in your opinion is the proportion of inhabitants living in the district of Miller County, the proportion living in the Miller County, the proportion living in the Miller County Highway and Bridge District?

A. That district comprises practically the north half of Texarkana,—well, there is a larger population in the north half than in the south half.

Q. More than half the population in the county?

A. Yes sir.

Q. This is an agriculture country?

A. Yes, sir.

Q. That is the main source of livelihood of the people in the north half of the county?

A. Yes, sir.

Cross-examination.

By Mr. Moore:

Q. You don't mean the City of Texarkana is agricultural?

A. No, he said outside of the city of Texarkana.

W. B. Fulton, a witness sworn on behalf of the Prairie Pipe Line Co., plaintiff, testified as follows:

Direct examination.

By Mr. Arnold:

Q. What is your occupation?

A. Chief Engineer of the Standard Pipe Line Company, Incorporated.

[fol. 73] Q. How long have you served in that capacity?

A. Every since the organization of the pipe line.

Q. What experience have you had?

A. Eight years with the Standard Oil Co. of Louisiana and the Standard Pipe Line Co.

Q. Are you familiar with the location of the pipe line in Miller County Highway & Bridge District?

A. Yes sir.

Q. Have you a map showing that?

A. Yes sir.

Q. Is that the map?

A. Yes, sir.

Q. Does it show all the roads that are constructed, or not?

A. No; there was one road that is missing.

Q. Show where it started from?

A. Toward Texarkana on the main Fulton highway for the Little River highway about a mile towards Texarkana, and then it turns west.

Q. Over through here?

A. Yes, sir; I don't know where it goes over there but I know where it breaks off about here (indicating).

Q. Now then the dark line indicates the line of the pipe?

A. Yes, sir; heavy blue line. There is a fork in the pipe line, section 14-16-28.

Q. And these forks come about a mile apart?

A. Yes, sir; at the time this map was made.

Q. What was the number of miles of pipe line in that district as of July 4, 1920?

A. There were 25.49 miles.

Q. Have you all the acreage in that district?

A. No, we don't get that from the record.

Q. You can't figure that up in just a few minutes?

A. I would have to make a rough estimate from the map.

Q. Mr. Fulton, where did you get the location of these roads?

A. From the description, I believe they are, furnished in the acts of the legislature.

Q. Does the act say that the Commissioners just got the right to build 60 miles of improved highway?

A. I think so.

Q. Then from your investigation of the records of the Highway Department and the records here, these roads here are the ones that were built?

A. Well, the Highway Department did not even know there was a road being built in Miller County, Arkansas, and the records on file at the County Court house is where I got these roads.

Q. Then you had as of July 4, 1922, 25.49 miles pipe line within the district?

A. Yes, sir.

[fol. 74] Q. As to telegraph and telephone lines, I wish you would describe what property the company had at that time?

A. The telegraph and telephone lines came down,—all we had when we took over the lines from the Telephone Company was the wires, the wires came down over the Southwestern Bell Telephone Company's poles.

Q. You owned none of the poles?

A. No, we leased the right from the Telephone Company to string all wires on their poles.

Q. I wish you would explain how the pipe lines are constructed?

A. The pipe is generally bought from the mills and delivered at our unloading points, which is generally sidings along the railroad, they are unloaded and stacked.

Q. What materials are the pipe lines made of?

A. Rolled steel.

Q. Are they buried beneath the surface of the earth?

A. They are.

Q. To what depth?

A. We generally put them 18 or 20 inches.

Q. How is the inspection of the pipe lines made?

A. The inspection of the pipe lines are made by an employee called the line walker, he has a section that he covers and makes the round trip approximately once a week. He carries his own tools with him for repairing and he walks the entire line. He never digs up the line but he notices from the condition of the soil whether there is any leaks.

Q. Will the construction of that road increase the pipe line value?

A. Not a bit.

Q. Will it increase the volume of the pipe line giving any greater capacity?

A. Not a bit.

Q. I will ask you if the value of that pipe line has been enhanced in any sum whatever by reason of the construction of these roads?

A. Not at all.

Q. When did the Standard Pipe Line Co. acquire this property?

A. December, 1922.

Q. How many times has it been necessary to make any repairs on the line since that time, in that district?

A. There has been no major repairs.

Q. Explain major repairs?

A. Well, the line is constructed of joints of the average length of 21 feet, and are connected up with what pipe line men term collars and they are screwed into these collars. These collars occasionally will leak. The line walker has his caulking tools along and caulks these points.

[fol. 75] Q. Do any of these, roads in this district parallel the pipe line of the company?

A. None at all.

Q. Has the expense of upkeep been any less now than it was before the roads were built?

A. No sir.

Q. Does the company receive any products for transportation through Arkansas?

A. Not through this district.

Q. Or within this line of pipe leading from the Oklahoma line down through Louisiana?

A. No, sir.

Q. Does it sell any products at all in Arkansas?

A. We have no commodities for sale except transportation.

Q. Strictly a carrier for hire?

A. Yes, sir.

Cross-examination.

By Mr. Moore:

Q. You know, do you not, that you have left off several matters on that map in making it up?

A. No, I don't know of any roads except one, that has been left off that map from the description furnished from the acts of the legislature.

Q. I am not speaking anything from the acts of the legislature but from the roads that are now built?

A. There is probably several roads in the county not on that map.

Q. Do you know that a road goes directly north on what is the State line?

A. Yes, sir.

Q. You have driven over that road?

A. Yes sir.

Q. It is a hard surface gravel road?

A. Yes sir. That road shows on that map.

Q. I will ask you if you are not mistaken in saying so?

A. Does not show on that map.

Q. Then you are mistaken in saying that?

A. Yes.

Q. Isn't there a road that goes from Mandeville, shortly south of Mandeville out east, up about Dooley's Ferry?

A. I don't know where it goes to, but I know it leaves about a mile south of Mandeville.

Q. Isn't there a road known as the Sanderson lane?

A. I don't know it.

Q. Did you get a road that branches to the left about three miles out between here and the pumping plant?

A. Yes.

Q. That road is not shown on this map?

A. No.

Q. Do you know there is a road that goes out over College Hill and goes almost directly east, the Genoa road?

A. Yes.

[fol. 76] Q. That is not shown on this map?

A. No.

Q. Then you have left off those four roads?

A. Yes.

Q. After putting on the road going towards Dooley's Ferry, how many places will the roads in the District cross the pipe lines?

A. Four.

Q. And in addition to crossing it, I will ask you if that road that goes out of the east does not come within a half mile of the pipe line on the Genoa Road?

A. That road is not in the District.

Q. That is the boundary of the district, if you are not acquainted with the boundaries.

A. Yes, I am acquainted with the boundaries, but not acquainted with this map. What was that question?

Q. Whether the road from Texarkana going almost due east does not reach a point within about one-half mile of the pipe line?

A. Yes.

Q. How many miles of right of way approximately, are there of the pipe line inside the district? I am not speaking of miles of pipe, but miles of right of way?

A. We have no right of way.

Q. I am not going into a legal question with you. The lawyers will settle that. On land, for about how many miles inside the district have you laid lines of pipe?

A. There is a difference between the two lines. It is approximately twelve and a half miles each.

Q. Now how many miles of pipe are laid on that 12.5 miles of right of way?

A. At what time?

Q. At the present time, now?

A. 51.25 miles.

Q. How many miles have been laid on that right of way within the district during the years 1916 and 1917?

A. I haven't any authority on that at all.

Q. You were not here then?

A. No.

Q. When did you come here?

A. 1918. I wasn't connected with the Prairie Pipe Line Co. at that time.

Q. Could you say how many miles of telephone line on that right of way now?

A. There is approximately 12.5 miles at this time.

Q. One line of that?

A. Yes.

Q. During the year 1920, how many miles of pipe were laid on that right of way?

A. Approximately 25.49.

Q. How many pipe — did you have on the right of way during the year 1920?

A. Two.

Q. And you have four lines now?

A. Yes.

Q. What size pipe?

A. Eight inch.

[fol. 77] Q. What year was the telephone line built on the right of way?

A. I think it was 1923.

Q. There had been a telephone line prior to that time?

A. I have no knowledge of that at all.

Q. It was there before your time, if it was there?

A. It was there before my time, yes.

Q. During what year was the second line of pipe laid on that right of way?

A. I have no knowledge of that. That was Prairie Pipe Line Company work.

Q. When you came here there were two lines of pipe were there?

A. Yes.

Q. Which is the line of pipe, where was the line of pipe that was taken up going north towards the river?

A. When.

Q. At any time?

A. In my knowledge there has been two lines taken up.

Q. What year was the first line taken up?

A. I don't know; that was done by the Prairie Company.

Q. You state it was in your knowledge?

A. It is hearsay when it was taken.

Q. How many miles have been taken up since you were with the company?

A. One.

Q. Where did that line run?

A. The one farthest east.

Q. This line here (indicating) is not in existence now?

A. Not in existence now.

Q. All the pipe are on the same right of way now?

A. That is correct.

Q. What was done with the pipe that were taken up from that line?

A. Probably stacked some place for future use, sorted over and culled.

Q. Where were they hauled to be stacked?

A. I really don't know.

Q. What time was it that line was taken up?

A. That was done this spring or last fall and winter, 1924 and 1925.

Q. Did you during the year 1923 build an extension to that line?

A. We did.

Q. How many miles of extension did you build? First, did you in 1921 build an extension?

A. We didn't have a line in 1921.

Q. You said you were here at that time, I believe?

A. Yes.

Q. Do you know whether the Prairie Pipe Line Company built an extension in 1921?

A. No.

[fol. 78] Q. You don't know?

A. No.

Q. In 1923 did you put in two additional lines of pipe thru the entire district?

A. Yes, sir.

Q. What method did you pursue in building that line in 1923 for getting your material on the ground?

Mr. Arnold: I don't think it pertinent. It relates to a pipe line that is in. It is going into matters that have no business before the court.

Mr. Moore: Your Honor, I think that we have ample authority.

The Court: It may go on.

A. We unloaded our pipe at the railroad side track and hauled it out and strung it along the right of way.

Q. At what sidings did you unload that pipe?

A. The pipe was unloaded at Paup Spur, Texarkana and Genoa.

Q. Now take the pipe that was unloaded at Paup Spur, what method of transportation did you use?

A. We used trucks and teams.

Q. Did you haul with those trucks over these improved gravel roads?

A. We did.

Q. What size trucks did you use, Fords or large trucks?

A. Large trucks.

Q. Did those trucks after reaching the distributing point, unload that pipe by the side of the gravel road?

A. No sir: some times they took it right into the pipe line right of way.

Q. Where the pipe line right of way was a mile or more distant from the road, did you not customarily unload the pipe from trucks on the side of the gravel road and then haul that pipe down the right of way with teams?

A. No, customarily we do not do that, because the cost of rehandling is more than we can save hauling by truck.

Q. Did you not in this particular instance, unload that pipe along the side of the gravel road and then hire teams to haul it?

A. I do not believe we did.

Q. Would you swear that you did not?

A. The best of my knowledge we did not.

Q. Did you not employ a contractor with teams who hauled that pipe with wagons and teams?

A. That is beyond my knowledge. I know of no contract whatever.

Q. You would not say you did not do that?

[fol. 79] A. No, I would not say we did not do it.

Q. Do you not know that the dirt roads were in such condition that you could not haul out the heavy loads of pipe over them?

A. We never at any time could haul as much over the dirt road as we could over the gravel road.

Q. Then you admit you could not haul as much as you could over the gravel roads with trucks?

A. Yes, I admit that.

Q. First, how many men did you use in laying that pipe line?

A. I have no knowledge of that.

Q. How many months were you engaged in laying that pipe line?

A. Altogether probably six months.

Q. You had full charge of the construction, did you not?

A. No, sir.

Q. What was your business or employment?

A. My business was Chief Engineer, designing, surveying and cost accounting, to some extent, and making up estimates and designs.

Q. Have you as an engineer ever had occasion to do considerable hauling of any kind in your work?

A. Yes, sir.

Q. I will ask you whether you can haul cheaper and quicker over a hard surfaced road than you can over the ordinary dirt road throughout the country?

A. Surely.

Q. If you have large quantities of material to deliver, is it an advantage to have a hard surface road over which that material can be delivered?

A. If it gives the road and covers the territory you want to haul it.

Q. I will ask you if within the area of the Miller County Highway and Bridge District an improved road does not reach within two miles of every part of the pipe line within that district?

A. It does.

Q. What would be the greatest distance from Mandeville, or from Paup Spur, or Texarkana to any part of that pipe line?

A. You mean over the improved road?

Q. No; by any line, air line?

A. The greatest distance presumably 13 or 14 miles from Texarkana, that is, within that district.

Q. Then would you say from your knowledge of engineering that in building this pipe line when you can get in close cases to almost every part of it over a hard surface road, that there was no benefit received from this road?

[fol. 80] A. Yes, sir; for the plain reason as an engineer there is no point on that road on any one of these hard surface roads but what is just as accessible from Mandeville station or Genoa. We have got that gravel road to haul extra.

Q. You have not answered my question.

A. I answered the question I think. There is no benefit received from the hard roads.

Q. You admitted that this pipe was hauled over this hard surface road to be delivered along the right of way of the pipe line?

A. Yes, sir, partly over the gravel road.

Q. If there was no benefit obtained from hauling over said roads, why did you not haul along the right of way instead of using the roads?

A. At the time we were building these pipe lines we were also constructing, extending and adding on to a station at Mandeville. We have only one small unloading spur, it holds approximately five cars ordinarily. If there were no construction going *and* and the spur was available for unloading pipe at Mandeville, all of that pipe would have been unloaded at Genoa and Mandeville and distributed practically on the pipe line, regardless of the hard surface roads, but while the construction of the pipe line was going on we were unloading and storing on that five car spur a total of 129 car loads of material including sand, gravel and other things. And besides that the spur track is on the wrong side of the [wrong side of the] railroad and there is a double track railroad and single track siding anyway we could not unload the pipe there. Therefore, we had to go to Paup Spur and Texarkana. We did not do that by choice because [there] were the only unloading points available.

Q. Have you been over the pipe line?

A. Yes, sir.

Q. As you go in a northerly direction from Mandeville, what is the character of the country following the pipe line as to being level or broken for the first three or four miles?

A. Well, it is a little broken, not much.

Q. Are there not a number of drains and trenches that go through there making hills and holes?

A. Yes; it is not a rough country though.

Q. Would it have been possible to have taken heavy trucks such as you use, to have gone over that right of way from Mandeville north with loads of pipe?

A. We do not go over those anyway with heavy trucks most of the way.

Q. You used those trucks for hauling on hard surface roads?

A. We do haul over country roads also.

[fol. 81] Q. You bogged down?

A. Yes, we bogged down. Lots of times we go through bridges. That has occurred when we [we] were on the highway, and we built a better bridge than they had in there.

Q. How many men did you use in building that during the six months?

A. About sixty men altogether.

Q. Where did these men come from principally?

A. All over the United States.

Q. I am speaking of where did they come from that morning, and where did they go to each evening?

A. From the camps.

Q. Where were those camps?

A. I don't really know where those camps were situated; along that right of way.

Q. Is it not a fact that most of those men came from the City of Texarkana?

A. I don't know where they came from.

Q. Were you in charge of that work?

A. No, sir.

Q. I thought you said you knew something about it?

A. I do.

Q. Who was the man in charge of it?

A. Directly in charge?

Q. Yes, sir.

A. One of our District foreman.

Q. Where were you living when that work went on?

A. Shreveport.

Q. You were not up here except occasionally?

A. Occasionally.

Q. Then of your own knowledge you don't know where these men came from?

A. Yes.

Q. Of your own knowledge you don't know how these pipe were hauled out over the line?

A. I don't know when every joint of pipe.

Q. How many times were you on this job while the work was going on?

A. I would say ten or twelve or fifteen times.

Q. How would you do when you came in to go on it?

A. What do you mean?

Q. Would you stay here a day and night, or come in in the morning and go back to Shreveport that night?

A. Probably stay here a day or two depending on what I had to do.

Q. How would you go from here to the job?

A. I generally drove up from Shreveport in a car.

[fol. 82] Q. You drove out on the job, you took your automobile?

A. Yes some times I walked.

Q. Did you ever walk from Texarkana all the way out?

A. No.

Q. You were mistaken when you said some times you walked?

A. I said some times.

Q. You mean you walked after you were on the pipe line?

A. Yes, and I walked from where I was at the time. Some times I did not stop at Texarkana.

Q. But in going to Mandeville, or to the pipe line, you used an automobile?

A. Yes.

Q. You drove over these roads to get there?

A. As a private citizen I drove over it.

Q. Did not the workmen go out in automobiles and in truck loads?

A. Some of them drove their own private cars. Yes, we have driven cars out there, paying 4 cents a gallon gasoline tax.

Q. Didn't the company have regular trucks that came to Texarkana, loading them with as many men as they would carry?

A. Yes.

Q. Take them to work and bring them back?

A. Yes.

Q. By doing that were they not benefited?

A. No. I think the workmen themselves were benefited by that. It was an added cost to us.

Q. I am asking you not for your opinion but for the facts.

A. No, I don't think the company benefited particularly by that.

Q. I asked you did you not have trucks that carried these men out in the morning and picked them up and brought them in at night?

A. Yes, sir.

Q. How far is the pumping station and the offices of the company at Mandeville from the public road that goes from here to Fulton?

A. Maybe a hundred yards or so; just off the public road.

Q. Would it be possible for any person connected with the company, whether workman, superintendent or general manager, to live at Mandeville and not know that this road was being built?

A. I do not think it would unless they were blind, or something.

Q. Then you think that the persons connected with the company living out there must have known that this road was being built?

[fol. 83] A. Yes, they probably knew the road was being built.

Q. Now you can't state, do you, that it was or was not any advantage to have these hard surface roads over which this 140 odd cars of material could be hauled? How many cars did you unload at Mandeville?

A. 129.

Q. How many did you unload at Paup Spur?

A. There were 21 cars.

Q. How many did you unload at Texarkana?

A. Seven cars.

Q. And that pipe and material was used in putting this second line through along the original right of way?

A. Only the 21 cars at Paup and the seven cars at Texarkana.

Q. Where were the cars unloaded at Mandeville used?

A. In the building of the station, cement, sand, gravel, valves and fittings and all building material.

Q. Did you not unload any pipe at Mandeville?

A. We unloaded eight cars.

Q. That was used in building the pipe line?

A. Some of it, yes; some of it was used in the station.

Q. Now all of this was done during the year 1923?

A. Yes, it ran a little over into 1924.

Q. Did you build the telephone line during that same period?

A. No.

Q. When was that telephone line built?

A. I think that was early in 1923, although I did not have charge of the electrical end of it.

Q. Where was the material for that telephone line shipped in?

A. I don't know. I am not connected with the telegraph and telephone department.

Q. Do you know whether pipe was hauled from Paup Spur across the bridge first over these roads, and then over into the Little River County?

A. To my knowledge, there has been no pipe hauled across Index Bridge from Paup Spur. All our unloading for across the other side of the river came from Ogden.

Q. Do you not know that pipe was hauled regardless of the purpose, from Paup Spur across the river at Index?

A. No, I do not.

Q. You do not say it was not?

A. No, I don't say it was not. I do not think it was.

Q. Do you not know that trucks loaded with men went from here over this road by Paup Spur to Index across the bridge to work in Little River County?

A. No, I don't know.

[fol. 84] Q. Do you not know that trucks with laborers came from Little River County, came across the bridge to work in this county?

A. I don't know that.

Redirect examination.

By Mr. Arnold:

Q. Whose trucks were those doing that hauling?
A. If they were doing it, they were our trucks.
Q. Did you pay an Arkansas license?
A. Yes.
Q. Are they big trucks?
A. Yes. I don't know what the license cost is.
Q. Did the hauling of this pipe benefit the pipe that was in there in the ground?
A. No.
Q. If it did anything, you didn't have to pay as much to construct the new line?
A. I would not say these roads helped us.
Q. If it did help?
A. No, it would not help the old line at all.
Q. Well, therefore, what is your opinion about whether or not it decreased the value of the old line?
A. Well, from a construction of a pipe line, I can't see that there is any difference in the value of it if a good road would parallel our pipe line so that we would not cross any other country at all. Just to parallel it, it might decrease the actual construction of that pipe line from fifty to a hundred dollars per mile.
Q. How could it benefit the pipe line?
A. It don't benefit the pipe line.
Q. It is not a pipe line until you get it in the ground?
A. No.
Q. If you wanted to construct new line somewhere you would not have to spend as much money to get it in the ground?
A. If we construct a line anywhere we pay no attention to good roads, the shortest distance between the points.

Cross-examination.

By Mr. Moore:

Q. Do you think a good road is any benefit to a country?
A. Yes, if I had a farm I would like to have a good road close to it.
Q. If you had a home would you want it?
A. Not too close.

Q. If you had a business would it be?

A. Well, personally to me it would be, but to my position I do not think it would.

[fol. 85] Q. Then it is no advantage to the farm, it is just an advantage to the man that lives on it, or goes to it?

A. No, I don't express that idea. If a road would come close to a farm I owned and a man wanted to buy it, the fact that that road went by it would admittedly raise that land almost double.

Q. And if a road went to a pipe line, that you had to go to very often, wouldn't it be worth more?

A. I don't know of any roads around here that does that.

Q. These roads do cross the pipe line at the places shown on this map?

A. Yes.

Redirect examination.

By Mr. Arnold:

Q. Isn't the main advantage to a farm the advantage that a farmer receives from being able to haul his products over the road to market?

A. Yes, from an ordinary standpoint, I think it would.

Q. You don't haul any of your products to the market, do you?

A. No, sir, not over highway.

Mr. Arnold: I have a blank form of right-of-way to the plaintiff pipe line company. Upon agreement with Mr. Moore this may be introduced as showing the rights of the plaintiff in the construction of this line through this territory.

Mr. Moore: I have no objection to the introduction of it. I will agree that the other one that is already in the case may be copied into the record.

Said right of way deed being in words and figures as follows:

"Right of Way"

For and in consideration of the sum of six hundred dollars we the undersigned hereby grant to The Prairie Pipe Line Company organized and existing under the laws of the State of Kansas, its successors or assigns, the right of way

to lay, maintain, operate and remove pipe lines for the transportation of oil or gas, together with the right of ingress and egress, on, over and through the following described lands situated in Miller County, Arkansas, to-wit: The East one half of the North west section Eight-fourteen S.—28 W.; the East Half of Section 8 and South Half of Section 9, Township 14, S. R. 28 W., and my land between the levee and the Red River north of Section 8 in Section 5-14-28.

The said undersigned owners, their heirs or assigns to fully use and enjoy the said premises except as the same [fol. 86] may be necessary for the purposes herein granted to the said The Prairie Pipe Line Company, its successors or assigns.

The said The Prairie Pipe Line Company, its successors or assigns, hereby agrees to pay *to* any damages which may arise from the laying, maintaining, operation or removing said pipe line; said damage if not mutually agreed upon, to be ascertained and determined by three disinterested persons, one thereof to be appointed by the owners of said land, their heirs or assigns, one by The Prairie Pipe Line Company, its successors or assigns, and a third by the two so appointed as aforesaid, and the award of such three persons shall be final and conclusive.

It is further understood and agreed, that the said The Prairie Pipe Line Company, its successsors or assigns, may at any time lay an additional line or lines of pipe along side of the first line, as herein provided, upon the payment of a like consideration for each additional line when laid, and subject to the same rights and conditions. Said company, its successors and assigns to have the right to change the size of its pipes, the damages, if any, in making such change to be paid by the said The Prairie Pipe Line Company, its successors or assigns.

Also the right to erect a tower on our land for telegraph or telephone service between the Levee and Red River on Section 5 or 8-14-28. Pipe line to be built along present survey, county roads to be followed where practicable in stringing pipe.

In witness whereof, we have hereunto set our hands and seals this 10th day of March, 1915.

(Signed) Tom Hinton, Mina A. Hinton."

R. A. McGrew, a witness sworn on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Arnold:

Q. What occupation have you?
A. Vice President, Standard Pipe Line Company.
Q. How long have you been such?
A. Since the organization of the company.
Q. Mr. McGrew, when did Standard Pipe Line Company purchase the pipe lines of the Prairie Pipe Line Co. in Arkansas?
[fol. 87] A. In December, 1922.
Q. At that time how many lines of pipe were there through this district?
A. Two lines of eight inch pipe.
Q. Did you at a later time lay additional lines of pipe?
A. We have.
Q. Did you have the right from the various owners to construct that line of pipe?
A. We did.
Q. How did you get that right?
A. By purchase.
Q. At the time you were laying it?
A. Prior to the time we would construct the line we negotiated for additional right of way.
Q. For what consideration?
A. For the same consideration on former occasions.
Q. Then when you constructed these additional lines you had to buy right of way for constructing them?
A. We did.
Q. And pay the consideration that you paid for the privilege that you first paid?
A. We did.
Q. Are you familiar with the lines of road and boundaries of the different roads districts?
A. I am in a general way.
Q. Has the construction of these roads enhanced the value of this pipe line?

A. I would not so consider it.

Q. In your own way give the basis of your opinion?

A. The improved highways in this territory under construction are constructed mostly running at a right angles with the pipe line. In a general way there are no roads that you might consider as paralleling our pipe lines. It might be said that when a road parallels our pipe line right of way for a limited distance at a remote point, remote from the pipe line, in the matter of pipe line construction consideration to roads is never given. In other words, if I was called upon to project a pipe line from one point to another, it is usual, generally we put a straight rule on the map and let it fall where it may, and that is the point at which we construct the line notwithstanding any connection with good roads. Anything that I might consider an extra hazard might be a slight change in aligning, but the shortest distance that a pipe line can be constructed between one point and another, is the original point to put the pipe line. That is true for two different reasons. It shortens your line of transportation thereby increasing your volume giving you the largest volume that can be transported through the line from one point to another and it lessens [fol. 88] the cost, and I say that for that reason that such matters as improved highways is not considered in the projection,— in the engineering work of the projection of a pipe line. Now we have a definite thing to do in the construction of a pipe line, the construction of which all takes place right on the right of way where the pipe line is to lay, and we have occasion at all times during the construction to move materials, men and other things up and down the right of way, and consideration is always given to the bridging of small ravines and the making the right of way passable, and our transportation is carried on over the right of way chiefly speaking. For that reason I do not think the highways as existing in this district that have been in no way designed to take advantage,—or to give advantage to the pipe line from the standpoint of transportation of materials, are of any benefit to us. And, taking another view of it, if we were to dispose of this pipe line to someone, the fact that these highways existed would not have any bearing on the value of the line to anyone else that should take the line to operate it. There is nothing that comes to

this pipe line over this road that goes as traffic; it is not in any way analogous to the railroad. Good roads might be construed in connection with the railroads as feeders to the railroad and thereby act as a factor in increasing the revenue of the road. That is not true in connection with the pipe line. By no stretch of the imagination can I figure that the improvement of roads in this district has been of any benefit to us. There were roads existing before these roads were improved that would answer the limited purposes for which we now use the roads. That is looking at it strictly from a pipe line view point. I have different ideas from a personal view point as to the necessity of good roads.

Q. Were the lines that you bought from the Prairie Pipe Line Co. constructed before these roads were constructed?

A. I don't know when the roads were first constructed. I believe, however, that the first line in 1919 was built some little time before any good roads were projected in this territory.

Q. The pipe lines were laid before 1917?

A. I mean 1909, the first line was laid.

Q. The second line was laid when?

A. I don't know when the Prairie laid their second line. I think in 1915.

Q. Mr. McGrew, has your company ever paid any taxes to this district on the pipe line or telegraph or telephone line?

A. Well——

[fol. 89] Q. Has it, or has it not paid the assessments to this district on its real estate out here at the Manderville station?

A. I cannot definitely state just what taxes our company has paid. I am most satisfied that all taxes that have accrued that were considered legal were paid. I do not personally handle that matter and I can't personally recall just what taxes were paid. I am most certain that all general tax has been paid.

Q. I am asking you about assessments sued for in this case like the one involved in this case?

A. No, I think not.

Q. You don't know what your predecessor has done?

A. No, sir.

Q. Has the assessment of the benefits against this property made in July 1920, did you at that time have the right to lay these additional lines in this territory?

A. That was before my jurisdiction in 1920.

Q. You didn't have the right then, because you bought the line after that. How many men were employed by your company ordinarily to keep the line in condition?

A. You mean from an operating point of view?

Q. Yes, sir.

A. It is a general practice of the pipe line operation to have what is called a line walker.

Q. For how many miles?

A. Those line walkers are usually called upon to patrol approximately forty miles. That forty miles is usually covered twice a week, that is, there is a round trip made within the week, making the patrol each week within the week for a given section. That is good practice. The purpose of this patrol is to detect small leaks.

Q. How many automobiles have you in use?

A. We have one automobile located in this district.

Q. Mr. McGrew, were you asked the question as to what opportunities you have had with reference to acquiring knowledge as an engineer, special knowledge as civil engineer?

A. I am not a civil engineer. As to practial pipe line construction, I have had 25 years experience, or thereabouts.

Q. That is, practical experience?

A. Yes, sir.

Q. Have you occupied any position with reference to employment as an engineer, or in charge of any part of the pipe line at any time?

A. I have.

Q. Are you a member of any society of mechanical engineers?

[fol. 90] A. I am a member of the A. S. M. E. I am associate member of American Society Mechanical Engineers.

Q. What has been your experience, what practical experience have you had with reference to pipe lines, building, laying or controlling pipe lines?

A. At some time during my career in pipe line work I have occupied every position that is available on the pipe

lines, with possibly one or two exceptions, such as stenographer or clerk. I have never occupied those positions. Every other occupation almost in the pipe line business I have some time or other worked in the capacity of such occupation. I have been common laborer, foreman of construction gangs, charge of commissary work, engineer on pumping stations, district manager, chief clerk in the office, in charge of the right-of-way work, and most every occupation connected with the pipe lines.

Q. Are you familiar with right-of-way where the pipe line is now laid that belongs to the Standard Pipe Line Company Incorporated?

A. Only generally speaking.

Q. Do you know where this pipe line enters Arkansas and where it goes out?

A. Yes, sir.

Q. At what point does it come in?

A. It enters Arkansas about 12:38 northwest from De Queen.

Q. Running in what direction?

A. Running southeast and northwest.

Q. To what point?

A. From a point on the Oklahoma-Arkansas State line to a point on the Arkansas-Louisiana State line near Ida, and then going on south from there to Baton Rouge.

Q. Is this company engaged in any other business than that of transporting oil from the neighboring state of Oklahoma?

A. No, sir.

Q. From some point in Oklahoma to some point in Louisiana?

A. No, sir.

Q. Has it any local business of any kind in the State of Arkansas?

A. No, sir.

Q. What is the life of a pipe line that put down in such territory?

A. It is generally conceded that the life of a pipe line is approximately 20 years. That will not hold good in some sections.

Q. Is that [any] average estimate?

[fol. 91] A. That is an average estimate that I think would be well to consider correct. We have some territories where the life of a pipe line will not exceed six years.

Q. What is the reasonable market value of a pipe line estimated by the prices of 1920?

A. The market value?

Q. The cost of its construction?

A. You mean the re-placement cost?

Q. Yes?

A. Well, for 1920, and since that time a re-placement cost of 8 inch pipe lines in 1920 in this territory is $11,500.00.

Q. Do you know what the re-placement was in 1919, construction price?

A. No, I couldn't say as to that.

Q. In 1915 do you know what it was then?

A. In 1915 my recollection of that would be between eight and nine thousand dollars per mile.

Q. Could you say that it was less than that in 1909?

A. It would be my judgment that it was considerably less, but I would not say just what that figure would be.

Q. Your company, or that is, Standard Pipe Line Company Incorporated of Louisiana, bought the Prairie Pipe Line Company's lines, I believe it has been stated, about December 1, 1922. Is that correct?

A. That is correct.

Q. There were two parallel lines at that time?

A. That is true.

Q. One of them you state, I believe was laid about 1909?

A. That is my recollection.

Q. And the other about 1915?

A. Yes sir. I make those statements based on the fact that the Standard Oil Company's pipe line in Louisiana were being constructed the first in 1909, and the first line in Arkansas was being constructed concurrently. We made an increase in our pipe line in 1915 in Louisiana and it is my understanding that the Prairie Pipe Line Company increased their facilities here. That is the only knowledge I have of the time these lines were constructed.

Q. Now with reference to the life of one of these pipe lines, do you figure an annual depreciation of any percentage?

A. Yes.

Q. What is that depreciation?

A. I think there is an annual depreciation of 5% each year.

Q. The lines that were put down in 1909 and 1915 were not worth as much in 1920 as they were when put down?

A. No, sir.

[fol. 92] Q. I want to know what the value of those two lines were per mile in the year 1920, what was their value, considering the depreciation?

A. Well, there would be the difference in construction cost less depreciation.

Q. They would be worth less at that time than they were when they were new?

A. Yes, sir.

Q. In other words the pipe lines will depreciate 5% a year?

A. Yes, sir.

Q. Have you kept in touch with the repairs that were necessary on this pipe line that was bought from Prairie Pipe Line Company?

A. I have in a general way, yes, sir.

Q. State to the Court what repairs have been necessary, if any, on the line in this district that you have purchased from the Prairie Pipe Line Company, what repairs have been necessary since that purchase?

A. There has been no major repairs necessary on the pipe lines in this district, with the exception of—to the best of my recollection, with the exception of the removal of a piece of line near the river. A part of that line was taken up and placed on the new righ-of-way and in the changing of the lines from one point on the river to the other, there was certain pipes that was badly depreciated, removed and renewals put in at the time the re-alignment was made. In other words, the changes were not done on account of bad conditions, that is bad conditions alone did not cause us to make this change, but in order to meet our condition at the river we re-aligned our pipes and at the same time took advantage of the repairs necessary, but there has been no major repairs, no serious breaks or anything of that kind in there since we have been operating that line.

By Mr. Black:

Q. Mr. McGrew, considering the construction of the pipe lines through a given territory, what difference would the existence of hard surface roads in a given territory make in the ultimate cost of the construction of that pipe line per mile?

A. Unless the roads were constructed especially for the purpose of pipe line construction, it would not make any noticeable difference.

Q. The only difference that a good road would make would be in the item of hauling pipe and construction of the pipe?

A. That is the only real difference that it would have on it.

[fol. 93] Q. Mr. McGrew, what is the usual average cost of the item of hauling in the construction of a pipe line per mile in all the systems which our pipe traverses?

A. It has been our experience that the cost of stringing 8 inch pipe line will run between three hundred and seventy-five and four hundred dollars per mile.

Q. Good roads and bad roads?

A. General conditions taken in consideration all over a pipe line system. It is possible of course for the constructing of a pipe line to cost in excess of a thousand dollars a mile for hauling in swampy areas and things of that kind. I speak of $375.00 and $400.00 as being the general average cost of stringing pipe lines.

Cross-examination.

By Mr. Moore:

Q. Where do you live?

A. Shreveport, Louisiana.

Q. How often during the year 1923 were you up and over that part of the pipe line in this road district?

A. Personally I have not been over all the right-of-way in this road district.

Q. How often were you on the right-of-way in this road district during the year 1923?

A. To the best of my recollection I was on the pipe line right-of-way at two different times.

Q. How often were you on the pipe line right-of-way during the year 1924?

A. Once.

Q. Then [the] during the entire period of the construction of this second line, you were only on the pipe lines from one to three times?

A. That is correct.

Q. In your testimony as to the effect of good roads on a pipe line then you were ref-rring to your general knowledge of all roads and all pipe lines, and not to this particular section of road and pipe lines?

A. That is not strictly true. I have before me constantly detail maps of my pipe line rights-of-way everywhere which shows pipe line alignments, topography, water courses, open land, wooded land and every detail insofar as the general information that I may get. I do not consider that it is necessary for me to be personally on the right-of-way to know the exact conditions.

Q. You do not know then whether this right-of-way is across broken territory or up and down hill, or the character of it from any personal investigation?

[fol. 94] A. Not from having personally walked over each foot of this ground, no sir.

Q. I suppose, having only been here the limited times you mentioned, you do not know of your own knowledge how the pipe was put on the ground, nor how the men that laid it reached there to work, do you?

A. No, sir, I do not.

Q. You gave an argument I believe, giving your idea as to why the roads did not or could not, or did not benefit any pipe lines?

A. I said the improved roads.

Q. Do any roads benefit a pipe line?

A. Roads are necessarily useful in connection with pipe line work.

Q. Is it not easier to build or repair a pipe line through a territory that is a passable road than through territory without a road?

A. Depends entirely on the location of the road.

Q. If a road reaches within two miles of any section of a pipe line, isn't it an advantage over a pipe line that may be ten or twelve miles away from a road?

A. It might and might not be depending on the distance from other lines of transportation.

Q. You ship your pipe in over railroads and then haul it out over the roads, whether it is a road or whether you have to get a right-of-way to deliver it, do you not?

A. That is correct.

Q. Does it not cost money to open up a road across a territory where no road exists?

A. Right-of-way has to be opened up for other purposes other than transportation. You could not consider then the opening of a road as entirely chargeable against the right-of-way itself.

Q. But after opening up a right-of-way for the pipe line, that still doesn't give you a road does it?

A. It does.

Q. Are not the stumps, the branches, the hills, the depressions and various obstructions still there after the timber is taken away?

A. There may be some sharp ravines that have to be bridged, we would have to bridge that anyhow for construction forces.

Q. Would not that right-of-way be the same right-of-way that exists where a good road is being constructed? All you would have is cleared land instead of land without stumps after you have got the right-of-way?

A. In clearing the right-of-way for a pipe line it is taken into consideration there will be hauling down over the right-[fol. 95] of-way. For that reason the stumps are cut low like is the usual procedure for highway construction.

Q. You do not in clearing the right-of-way level up the rough places do you?

A. We do.

Q. Then you build a road as you clear the right-of-way?

A. Practically so. There is what we call right-of-way work done ahead of construction of pipe lines. In speaking of such right-of-way work it means that the wooded land is cleared of timber, all the sharp contours are leveled off in order to avoid the abrupt bending of pipe prior to its being placed in the ditch. That work is necessary as I say, to avoid the abrupt bending of the pipe, and in as much as it is necessary for that reason to do that it prepares a fairly good right-of-way, none of of which is charged against roads proper after it is utilized.

Q. Is that road, that is the earth that exists there which becomes soft in wet weather, it is of the same nature as any other territory lying between good roads and your pipe lines?

A. Subject to the same conditions.

Q. If you owned a house and lot and lived here in Texarkana, in your opinion would a good road be any benefit to that house and lot in the City of Texarkana?

A. Not from a pipe line standpoint.

Q. Now I am speaking of the standpoint of the house and lot?

A. I think it would.

Q. It would be a benefit to you if you wanted to drive over the road, wouldn't it?

A. Naturally you derive such pleasure from the use of good roads. But all you as an individual would benefit would be that it probably would enhance its value for the reason it would be conducive of thicker settlement of the territory effected.

Q. It would enhance its value very much and from that one could hardly estimate except in a general way?

A. That is true.

Q. You couldn't say it enhanced it 20 dollars or $500.00?

A. It is the general consensus of opinion of people every where that improved highways enhances the value of real estate and dwellings and things of that nature.

Q. Wherever you have a business or a factory or any enterprise employing labor, is it an advantage if you can have an ample supply of labor?

A. It is.

Q. Do not good roads to any enterprise give excess to labor that could not be had without the good roads?

[fol. 96] A. It does not generally speaking, I do not consider it so.

Q. When building a pipe line in territory adjacent to towns or cities, is — not often necessary to put in camps and take in men to do the work?

A. That is the general practice everywhere.

Q. Is it any expense to run a boarding camp?

A. Yes, there is expenses connected with it.

Q. Then if instead of running a camp these men can be taken in on trucks to do the same work, would that not save the expenses of the camp outfit?

A. Not necessarily so.

Q. Why not?

A. Just a matter of which is the most expensive. You might have a choice of two methods.

Q. Do you know which method was used in building this pipe line here in 1923?

A. There was two methods used, both methods were used.

Q. Where was the camp?

A. There was a camp used south of Mandeville. I don't know just how far up we came with the camp. I think generally speaking though, that our construction forces were taken care of outside of camps in this territory north of Mandeville.

Q. How were those laborers taken from the camp to the work?

A. I presume by automobile or truck transportation generally speaking, depending upon where they were located.

Q. They were carried over these roads in trucks to the neighborhood of the work?

A. That is true.

Q. Yet you say that is not a benefit to the pipe line?

A. I do not consider that that was necessarily a benefit, I might make this statement in this way to get it clear before the Court just what I mean. You may have a choice that is might present a convenience. There are territories through which pipes lines may pass where there is no good roads at all but there may — living in that community rather thickly settled with white people where construction forces can be boarded and lodged right on the work. On the other hand there may be a possibility of handling construction forces over short distances over highways to quarters somewhat remote. In territory where there is no facilities the camp method is used for housing forces. That in the main is the most satisfactory method under any circumstances on a big job. The satisfactory way is to encamp them. Then if you have a camp you can move a camp. Pipe Line [fol. 97] camps are usually moved every six miles. In other words, there is three miles of construction handled in the rear of the camp and from the same setting, three miles of construction is handled forward, then the camp is moved six miles, usually moved directly over the right-of-way.

Q. Would you consider if you had a plantation that it would be any benefit if you could take laborers down to pick cotton over a hard surfaced road?

A. I don't know, I am not a plantation owner.

Q. If you had any place that you had to employ labor and could carry them over a hard surfaced road and not have to keep houses and boarding outfits, would that be any advantage?

A. I could not say; I have had no experience handling that class of labor.

Q. I will ask you if you had any kind of enterprise from making ties on up to laying pipe and could carry laborers out as they were needed quickly over good roads, is it not an advantage to that business?

A. I would have to analyze the detail of the situation before I could make a statement as to which would be the most advantageous.

Q. You do not lay pipes continuously so you could put a camp at some times?

A. My experience in the last five years has been such that I have had continuous work.

Q. But that has been scattered over many miles of territory?

A. Yes, sir, but we have always during that time had the necessity of continually moving camps.

Q. Did you not keep a number of trucks employed hauling men during the entire construction period in this territory?

A. We have a fleet of trucks that we use everywhere, some of those trucks, I believe, were in this territory at that time.

Redirect examination.

By Mr. Black:

Q. Mr. McGrew, your experience as a pipe line man, in pipe line construction, does it make any difference how far the construction work may be from civilization or from habitation of the amount of work that is available for the pipe line construction work?

A. There might be a limit to that statement, Mr. Black generally speaking in any territory of the United States I would not consider it so.

[fol. 98] Q. Wherever there is pipe line work there is generally workers no matter how far they are, or how far from civilization that may be?

A. That is true; there is a certain class of people that follow the pipe line business just like they follow the circus business.

Q. Isn't it a matter of fact that they generally know that before the company does?

A. The grape line generally has advance information.

Q. Mr. McGrew, when you have a camp and construction work in a place where you haul the men, you pay the laborer the same amount per hour?

A. Yes, sir.

Q. Then you make no deductions for the camp expense from that laborer?

A. We make a deduction for the board.

Q. Then the man that lives in town or stays in town, or is carried out to work in the trucks, realizes more per day than the man who stays in camp?

A. That is true.

Q. And in that way you absorb the camp expenses in the labor?

A. Yes, sir.

Q. I will ask you Mr. McGrew, in the ordinary construction of pipe lines where the camp is moved about six miles, if the ordinary way of reaching the work each night and morning to and from the camp is not walking?

A. It is over *own* own right-of-way.

Q. And you never use the trucks for transportation unless you take them to the city?

A. No.

Q. Is your company considering the construction of any new pipe lines at the present time?

A. We are.

Q. Where is it?

A. From Smackover, Arkansas to the Mississippi River in Eastern Arkansas.

Q. Are there any good roads where that pipe line is going?

A. There are.

Q. In locating that pipe line, what considerations have you made of the good roads?

A. Not any.

Q. How did you determine the route which that line is to take?

A. Determined the route of this pipe line by the construction of the Ouachita crossing and using the straight line rule from the point of starting to the river crossing. That is the shortest route possible and therefore the cheapest. And that whole territory is covered with good roads because I was over there last week, there is plenty of good roads in that country. I don't know whether any of them [fol. 99] will be parallel to this line that I laid out on the map or not. Unless they are directly parallel there can be no benefit.

Q. In your experience of pipe line construction, I will ask you if the location of a city of the size of Texarkana with its highways leading to and from the pipe line right-of-way is any hindrance to the pipe line company in the construction of its pipe lines?

A. The crossing of improved highways presents an additional expense to us in that we have to meet certain expenses and requirements of the good roads. To construct a pipe line across an improved highway you have to approach the highway on either side, handle the embankment in a particular manner in order to prevent caving which requires certain bulk heading to be done, and then the rather slow process of using what we call a road auger has got to be used and bored through the sill underneath the hard surface and insert the pipe line in that manner, which is much more expensive than to cross the ordinary dirt road.

Q. With reference to the labor question, Mr. McGrew, what I had in mind was this: This city and its good roads detract the workmen from the camp at night?

A. That is true, it would work a certain handicap on your labor forces. These good roads make transportation quite accessible to centers of population where laboring forces are wont to gather at night, robbing them of rest, giving them opportunities to indulge in dope and things of that kind, to which they are generally inclined. In other

words, when construction forces are located close to centers of population we have more or less trouble with labor forces. That is the general experience.

Q. Do you have any camp rules which are invoked during the night?

A. Yes, sir.

Q. What are some of those rules?

A. Well, we usually have general instructions about lights out at ten o'clock and every one is supposed to be in quarters by ten o'clock or a reasonable bed time and infraction of those *of those* rules of necessity causes us to dispense with services of those that break the rules and that causes a heavy labor turnover, which is an added expense. An interchange of labor on the face of it seems like an inconsequential thing but constant changing of forces is an expensive thing.

Q. Do you permit any gambling?

A. We do not permit it but it usually goes on.

Q. Have you any rules with reference to the 18th Amendment?

[fol. 100] A. No liquor allowed in camp since the prohibition amendment. It is very difficult to keep it out because there is usually a still within a hundred yards of the camp.

Q. Mr. McGrew, in your experience, does the company get the best service on the wage paid the workmen that stays in the camp, or the workmen that boards in the city?

A. It is my opinion, and I think the consensus of opinion that labor housed in a company camp are the most efficient.

Q. The construction work that has been done by your company since the purchase of these pipe lines has all been done since the assessment made in the year 1920?

A. Yes, sir.

Q. With reference to the pipe lines that was in this district at the time this assessment was made, I will ask you to state to the Court in the company's administration and operation of that line, and its maintenance and inspection of it, in what way have these improved highways a*d*ded or [benefited] your company with reference to the lines already there?

A. The Standard Pipe Line Company purchased those lines in December 1922. Early in 1923 I started the construction of the other two lines that have been since built.

From the standpoint of operating those two lines that were there against which this assessment has been made, which we are now considering, from December until the time the Standard Pipe Line Company laid the other lines, I do not consider that the highways were any benefit whatsoever in the maintenance of those lines.

Q. Since that time have they had any effect or been of any benefit to you in the maintenance of those two old lines?

A. I have already stated that I do not think so.

Witness excused.

W. J. Springer, a witness sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Moore:

Q. What is your name?

A. W. J. Springer.

Q. You are chief of the joint Fire Department of Texarkana, Arkansas and Texas?

A. Yes, sir.

Q. And have been for a number of years?

A. Yes, sir.

[fol. 101] Q. I will ask you whether you are acquainted with the character of the road from here to Mandeville going out along the Iron Mountain railroad?

A. Yes.

Q. That is one of the improved highways here is it?

A. Yes, sir.

Q. Did you one day last week, with the crew of the cities of Texarkana, make a run with the Fire Department from here to Mandeville for the purpose of assisting in putting out a conflagration at the pumping plant of the Prairie Pipe Line Company or Standard Pipe Line Company?

A. Yes, sir.

Q. How long did it take to make that run from here to the pumping station?

A. I did not time it; I would say about 15 minutes.

Q. What is the distance there?

A. Six miles I understand.

Q. As a result of that was the fire extinguished so no very heavy damage occurred?

A. No, sir, the fire was not extinguished.

Q. You put it out after you reached there, did you?

A. No sir.

Q. When was it put out?

A. It burned out, so I understand, about 11:30 that night.

Q. What was done to prevent the spread of that fire by the Fire Department after reaching Mandeville?

A. We put a pump to work until the gate house boiled over, or rather the oil came back, boiled over and ran down the pit inside of the pump house. Then we quit pumping water and the only thing that was done then we replaced a door inside of the main engine room, a fire door which had burned and flooded that room. There was some ditching done and dikes thrown up. That was done by the company's men.

Q. As result of the work that was done was the fire prevented from spreading to other buildings and oil tanks and preventing a serious conflagration?

A. I would say that that was problematical. I would say the replacing of that fire door, and the ventilation possibly kept it from burning.

Q. The property was saved from burning?

A. The engine room, yes sir, and the rest of the property.

Q. Now would or could you have taken the fire apparatus over that road from here to Mandeville if it had been the ordinary country dirt road and not improved, could you have taken it, or would you have taken it?

[fol. 102] A. Well, that depends of course, on the character of road. Ordinarily I will say we do not answer calls on unimproved roads

Q. Why is it that you do not answer those calls?

A. On account of the condition of the road, and generally the condition of bridges on unimproved roads.

Q. What is the danger to men or equipment that you take to go over an unimproved road?

A. Well, you are liable to kill some men, of course, and tear up a piece of equipment. That equipment is pretty heavy, weighs about 7½ tons, just the ordinary country road bridges won't hold up that equipment.

Q. Then in this present instance when notified, you made the run because you knew you had an improved road over which you could go to the assistance of the parties calling for help?

A. Yes sir; I will say this, a short time back we refused to answer a call from Atlanta, Texas on account of the road.

Cross-examination.

By Mr. Arnold:

Q. Chief, what has your experience been with reference to fighting an oil fire with water?

A. We have had some here that we have put out with water.

Q. Did you have any effect on that one at all out there?

A. No, sir.

Q. It boiled over even with the water going in?

A. Oh yes.

Q. How many men did you have with you?

A. About a half dozen.

Q. How many men did the Standard Pipe Line Company have out there?

A. About 75.

Q. Now with reference to the work that was done, there, this closing of the door there, what per cent of that work was done by you and your gang, and what per cent done by owners of the property?

A. The majority of it was done by owners of the property. However it was done, I believe, at my suggestion.

—. Was there a ventilator in the room of that building?

A. Yes sir, but it was not ventilating the room properly.

Q. You broke out some windows too?

A. Broke out some skylights.

Q. Did they not ask you to desist?

A. No, sir.

[fol. 103] Q. Didn't anybody stop that breaking of skylights?

A. No, sir.

Q. Well, in your opinion, how much property did you save the Standard Pipe Line Company of Louisiana by making that run out there?

A. I think I have just about answered that question. I think that is problematical. It is a question of whether the ventilation and the stopping of that fire door, and I also suggested the repairing of where oil goes through with asbestos. It is a question of ventilation there.

Q. The fire burned until the supply of oil was exhausted, didn't it?

A. Yes.

Redirect examination.

By Mr. Moore:

Q. When you arrived there this door you speak of was still open?

A. Yes, sir. This door was closed then. They ran a small line through it and had it into the pump room. After the pump room was afire all over, been burning a little bit, I suggested that they take this small line out so the door would close and not *prevent* the flames to enter the engine room. They did that and then afterwards the door burned out. I forget the gentleman's name in charge. I would go to him with those things and suggest that he do that and also break out some of the skylights.

Q. Because of your knowledge and experience in fighting fire, your suggestions were accepted and the fire was extinguished and burned itself out and your suggestions were carried out?

A. I suppose they did. He did not seem to question the suggestion. He was very nice and seemed willing.

Q. And in breaking out those skylights, that was done to prevent the flames from spreading?

A. Yes sir, I did not do that until you could go in there and it would cause your eyes to water and burn.

Recross-examination.

By Mr. Arnold:

Q. Chief, your efforts and the efforts of the pipe line people were directed towards the stopping of a fire which was located up there on a piece of land where they had a pumping station?

A. Yes, sir.

Q. There was no pipe line on fire, in fact that would not get afire as anybody knows. This was a building where there was some oil leakage on this piece of land?

A. The fire was in what they called their gate house.

[fol. 104] Redirect examination.

By Mr. Moore:

Q. Did you go of your own suggestion or did you go at the request that the fire apparatus come out?

A. We went at their request.

E. L. STERN, a witness sworn on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Arnold:

Q. Please state your name and occupation?

A. E. L. Stern, Superintendent of the Texas Pipe Line Company in Louisiana.

Q. Where are you located?

A. Shreveport.

Q. What kind of pipe line is under your control and direction as Superintendent for the Texas Company?

A. I have charge of all the company's lines in Louisiana.

Q. I will get you to state to the Court whether or not you have considered the question of what benefits there is to pipe lines derived from—due to improved roads. and what is your knowledge of such matters?

A. Well, I can't see any advantage.

Q. Can you give your thoughts on this question, some reasons that you have?

A. Well, the first reason, one reason is when we arrange to lay a line we never take the road into consideration at all, that is, we run on what we call an air line from starting point to destination, and for that reason there is not very much good roads that comes in contact with pipe lines.

Q. State to the Court what the fact is with reference to adding or decreasing the expense when you come to a good road and it becomes necessary to cross?

A. Well, when we come to a good road in crossing what we call a dirt road, you dig right through it, and when you come to a good road we have to bore through with a road auger, and then we case the line under the good road outside of the pipe line with a size pipe larger than the line that we might be constructing, and the casing is an extra expense, and the excavation across is most always more expensive because good roads are ditched out deeper on both sides, and we have to go under this excavation, ditches and things like that.

Q. If there is a break in the pipe that is under this hard surfaced road, would not that be difficult to handle and become more expensive than a common ordinary dirt road?

[fol. 105] A. It would if it is deeper, like I say, in nearly all cases ditches on both sides of good roads are deeper.

Q. I have reference to a leak in the pipe, if there should be a leak, what difference is there in repairing it by removing the hard surfaced road?

A. We would not move this hard part. We bore a hole and put the casing in. We catch it on one side of the road and pull it out of the casing and shift it in and screw it on one side of the flanging.

Q. Then there is additional expenses to what it would ordinarily *would* be?

A. It is account of the deep ditching on both sides.

Q. Now with reference to maintaining that pipe line after it has been once laid, is that kept up by following a line of pipe and the right-of-way, or is done by traveling around on the good road?

A. We have a line walker who walks from station to station, some times forty miles, some times sixty miles, the line walker makes a trip a week, he goes to his destination and comes back, and on Monday morning he starts over the line again.

Q. How many men do you have, well—well, how much line can one man take care of?

A. One man takes care of a station to station, some times forty miles, and some times particular stations are as far as sixty miles apart.

Q. Those men are not employed traveling around on the public roads?

A. No, sir.

Q. Those men you have are going up and down that right-of-way?

A. Yes, sir.

Cross-examination.

By Mr. Moore:

Q. You do not know anything about this pipe line and the road we have under discussion now?

A. No, sir.

Q. All you are doing is, you are giving a general discussion whether it was here or Louisiana, of the facts?

A. No, sir.

Q. Do you think the building of good roads helps the telegraph or telephone lines?

A. I do not see how it could help them. It would help it to a certain extent if the road parallel the telephone lines.

Q. That is, you would have access to every part of it?

A. Certainly.

Q. If you had good roads right along the pipe line they would help the pipe lines?

[fol. 106] A. The only way a good road would help the pipe lines I would say would be in constructing the lines. It might have a tendency to reduce the cost of stringing the pipe, which is small.

Q. You mean assist in hauling?

A. Yes, sir.

Q. If, instead of having it right along parallel to every station, if you could get a road within a mile of the pipe line, would not that be some help?

A. Well, those things would have to be considered, like we might be paralleling the railroad somewhere and the switch every six or seven miles, the chances are the good road would not come in contact from the hauling of the line from the railroad out to the present place we would want to string it.

Q. In shipping out material and pipe is not it an advantage to have a sidetrack every few miles along the road to haul pipe?

A. It would reduce the cost of hauling your pipe if you had it, but there ain't any such.

Q. Then if you could have good roads that reached within a mile or two miles of every part of your pipe line, would not that assist somewhat over having a good road that was ten or twelve miles away from the pipe lines?

A. That would be the same as the railroad. The stringing of a pipe line is small compared to the other expenses connected with it and if you had a road,—you haven't got it and never will have on pipe lines every mile, it would be the same. I have not seen any of those kind of places.

Q. Do you think good roads are any advantage to any kind of business that is in a country?

A. Well, they might help the farmer hauling his trucks.

Q. Would it help the man running a manufacturing business?

A. I do not know anything about the manufacturing business.

Q. Would it help the man that is operating an iron foundry or any other kind of business if he had hard surfaced roads that he could get people in and out to his business?

A. I do not believe so; I do not see what an iron factory would sell.

Q. Do you think an access to any business or property, whether an iron factory or farm is of any advantage?

A. It would not help the pipe line, nor. It is in the ground, for the reason we so seldom have an occasion to go to it, I couldn't see it would be an advantage to it.

[fol. 107] Q. Do you ever go and visit any of your pipe lines?

A. Sometimes.

Q. Do you use an automobile in going?

A. Our 10 inch line goes from Shreveport to Louann, Arkansas. I have been over in this country going on 14 months and the line was laid when I came here and a week ago last Monday I was over the line on a Ford. That is the only time I have been on it in going on 14 months.

Q. Then you are not the person that makes regular trips over a pipe line?

A. I haven't any occasion for making any trips over the line unless the line is in trouble.

Q. If you were building a new line of pipe, would rather haul the material over a good road?

A. If the road parallelled the pipe line I would prefer hauling it on the hard road.

Q. Suppose it did not parallel it, but every two miles the good road crossed the pipe line, would not you use that good road to the point of crossing and then haul it to the distribution place?

A. We would probably use it, but we do not figure the savings in figuring out the cost of new pipe line. What little good road we have we do not take into consideration.

Q. You do not take it into consideration, but when you have work to do and the good road goes toward that point you use it?

A. Naturally, the most economical way.

Witness excused.

H. C. Black, a witness sworn on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Arnold:

Q. Please state your name and occupation?

A. H. C. Black, tax commissioner of the Prairie Pipe Line Company.

Q. Mr. Black, how long have you been tax commissioner of the Prairie Pipe Line Company?

A. Since the first day of July, 1919.

Q. What is your business for your company in that line, in that position, what is the scope of your duty?

A. I am the employee or the official of the company that has charge and supervision of all activities of the company with reference to making of renditions of its properties, the payment of taxes, upon its properties, and the handling of [fol. 108] every item and form of tax, with the exception of the income tax.

Q. What lines fall within your jurisdiction, where are they located?

A. The entire system of the Prairie Pipe Line Company.

Q. Just describe that?

A. Extends from middle Texas through Oklahoma, Kansas, Missouri, Iowa, Illinois and Indiana.

Q. Did it include the Prairie Pipe Line Company, the pipe line running from Oklahoma through Arkansas into Louisiana to Baton Rouge, that part of the pipe line in Miller County?

A. Had a pipe line running from Oklahoma-Arkansas State line to the Arkansas-Louisiana State line which was sold and transferred to the Standard Pipe Line Company Incorporated.

Q. Did it run on through Louisiana to Baton Rouge?

A. Our line did not. The Standard Pipe Line, or the Standard Oil Company of Louisiana at that time owned a line from the Arkansas-Louisiana State line to the city of Baton Rouge.

Q. That was interstate in reference to what? Was it an intra-state or interstate line?

A. Our line was a part of the pipe line extending from the interior of Oklahoma to Baton Rouge, Louisiana, but the different parts were owned by the Oklahoma Pipe Line Company, and the one connecting carried it in conjunction with the other two corporations.

Q. When did your connection with this part of the pipe line in Arkansas and Oklahoma that you refer to cease?

A. After the payment of taxes for the year 1922, which was in April, 1923.

Q. Did you pay the general taxes for your company in 1920, 1921 and 1922 in Miller County, Arkansas?

A. And 1923.

Q. Did you make the assessments for general taxation?

A. I made the returns, the state tax commission made the assessment.

Q. For what years?

A. For the years 1920, 1921 and 1922.

Q. You may state whether or not you returned the pipe line of this company as personal property to the Arkansas Tax Commission?

A. There was not anything in that return defining the pipe line as being personal property, but it was assessed by the Tax Commission as personal property.

[fol. 109] Q. Why do you say so?

A. Because the certificate bore that language, the certificate of the State Tax Commission said everything is assessed as personal property.

Q. State whether or not it embraced anything except more pipe or more lines, that assessment?

A. The assessment is made upon the pipe lines included and intending to cover a tangible and intangible value.

Q. Was this assessment that you made, made in accordance with the sub-division 4 of the Section of Crawford & Moses Digest, providing for the assessment of pipe lines?

A. Yes.

Q. Which embraced all classes of property?

A. Yes.

Q. Did that include the consideration of the entire line of property in and out of Arkansas?

A. In determining the value of the pipe line in Arkansas they took into consideration the entire property of the corporation of its entire system and its earnings.

Q. And what was the result having taken into consideration the entire property with reference to what was allocated to Arkansas it would place a value upon the entire property of the company and allocate that portion of the value which they fixed which the pipe line mileage in Arkansas bore to the total pipe line mileage of the entire system?

—. ——.

Q. Was the real estate of the company distributed with reference only to the school districts in which it was located, or with reference to the various school districts through which the pipe lines run in Miller County?

A. That was different in different years. Sometimes they assessed all the property in Arkansas as pipe lines. There was no definition or direction upon the certificate of assessment showing which was real estate and which was personal property.

Q. In addition to that assessment the local assessor assessed the real estate?

A. I must add that in making my return to the Tax Commission I always returned the real estate and without that they assessed it.

Q. You returned it to the Arkansas Tax Commission, real estate, and the County Tax Assessor took real estate property and put it in the real estate tax?

A. Yes.

Q. But the pipe line went on the personal books?

A. Yes.

Q. Now then, Mr. Black, state whether or not Mr. Hillford is living?

[fol. 110] A. He is not.

Q. He was the local workman here in charge of the pumping plant in 1920?

A. Mr. J. B. Hillford was the superintendent, not superintending engineer, or maintenance superintendent of the Prairie Pipe Line Company, his only duties was to have charge of the operation of the pipe line properties.

Q. He did no business for the company, conducted no business for the company and had no authority beyond an operating superintendent?

A. No, sir.

Q. Was he designated as agent for this company?

A. He was not.

Q. State whether or not he had any authority whatsoever with reference to the financial management of the company, or with reference to tax affairs?

A. He had nothing to do with any item of business with the Prairie Pipe Line Company. The Prairie Pipe Line Company did no business in Arkansas, maintained no office, paid no franchise tax in the State of Arkansas, was solely in the transportation of crude oil in interstate commerce. The movement of the oil through the pipe line system was under the pipe line dispatcher at Independence, Kansas, and all tenders of oil made to us. The only thing Mr. Hillford had to do was to see that the pipe lines remained in shape and that the station ran when he was told to run it.

Q. Did he have any authority to take notice of any assessment made by Miller County Highway and Bridge District?

A. Absolutely not.

Q. State who was the tax commissioner preceding you, of this company?

A. Mr. Van Tuyl.

Q. Where did he live?

A. Independence, Kansas.

Q From what time was he the Tax Commissioner?

A From the beginning until July 1, 1919.

Q. I am talking about Mr. Van Tuyl?

A. That is what I am talking about.

Q. And how long?

A. From the beginning of the existence of the Company until July 1, 1919.

Q. What period did that cover?

A. February 1, 1915, the Company was organized.

Q. Was Mr. Van Tuyl the Tax Commissioner at the time of the passage of this act of the legislature first creating the Miller County Highway and Bridge District?

A. He was.

Q. Did the Prairie Pipe Line Company or its officers know anything about the assessment of these alleged bene-
[fol. 111] fits against its pipe lines under that act of 1915 until these letters passed between Mr. McAntire and Mr. Little that we have introduced in evidence?

A. I have no personal knowledge on that line, Mr. Arnold.

Q. Did you find this correspondence in the office of the Company?

A. I found the correspondence in my office. It is the old files of the Tax Department of the company since its beginning.

Q. That is where it belonged, is it not?

A. Yes, sir.

Q. Is that all the correspondence you found in regard to this matter?

A. With reference to the assessment of 1916.

Q. How much do you find that the Prairie Pipe Line Company paid annually up to the time that this new assessment was made on account of this road district?

A. The year 1916 we paid tax on the pipe lines of $395.20. Well, we paid $14.40 on the Miller County Highway and Bridge tax against real estate.

Q. This $395.20, was that the pipe line assessment to this Miller County Highway and Bridge District?

A. For the year 1916.

Q. When was that paid and due?

A. I think it was due under the statute the 10th day of April and was paid on the 10th day of April, 1917, and that is, it was receipted by Mr. Gurley on that date.

Q. Do the assessments remain uniform to that amount until this new assessment was made in 1920?

A. Did not.

Q. What were the amounts each year that you finally paid?

A. The tax for the year 1917 was $395.60, for the year 1918 $416.01. That is the last we paid.

The Court: You paid three payments?

A. Yes.

Q. Were you familiar with the injunction suits that were referred to this morning?

A. Quite familiar.

Q. And at the time that these payments were made, were you under the compulsion of paying them or bringing these suits to enjoin the Collector from collecting them?

A. After I became Tax Commissioner of the Company I investigated the tax as levied by the Miller County Highway and Bridge District, I determined to my own satisfac-[fol. 112] tion that Mr. Van Tuyl had minimized the tax and the amount of the tax and we did not desire to pay the tax any further, and attempted to pay the general tax without paying the special tax on Miller County Highway and Bridge District, which the Collector refused to accept unless I paid the other tax. I then came to your office and had the necessary papers drawn *from* the purpose of securing an injunction to permit me to pay the general taxes of the company without the other taxes.

Q. I believe the result of that application has already been stated this morning?

A. Yes.

Q. Did that occur three successive years?

A. Yes sir, until finally we carried the case to the Supreme Court of Arkansas and the Chancery Court decision was affirmed.

Q. Now Mr. Black, you may state whether or not the Texarkanian has a circulation in Independence, Kansas?

A. Not to my knowledge it has not.

Q. Do you know anything about the alleged notice stated to have been published that the assessment had been made and applied in the County Clerk's office in the year 1920 on account of the 1917 amendment to this act creating the district?

A. I never heard of any such assessment, or never had any knowledge of it until I checked my tax back to the year 1920, which was in the latter part of March, 1921, and I dis-

covered that the taxes had jumped from $418.00 to $600.00. On investigation I found there had been a re-assessment some months before, along in July the previous year.

Q. Under the act at that time it had passed the time that you could appeal to the board and that was your first knowledge?

A. That was my first knowledge. I refused to pay this tax and secured the injunction which restrained the Collector from accepting the general tax, having in mind that the Miller County Highway and Bridge District would bring suit after the property was sold to Standard of Louisiana, that company brought it.

Q. That tax was paid then for 1918?

A. Yes, was for the year 1918.

Q. Mr. Black, do you know how many lines of pipe were in Miller County of the Prairie Pipe Line Company in this district at the time this sale was made to the Standard Pipe Line Company Incorporated December 1, 1922?

A. There were two parallel 8 inch lines.

Q. When have they been laid?

A. First line was laid 1909, second one in the year 1915.

[fol. 113] Q. Now prior to the time you were tax commissioner, what connection had you with the Prairie Pipe Line Co.?

A. I was in the right-of-way and claim department.

Q. For how long?

A. Since the 1st day of February, 1915.

Q. Were you familiar with the obtaining of the right-of-way on which these pipe lines were laid and with the contracts?

Q. Quite familiar. I settled quite a bit of damage on the line through 1915, through Arkansas.

Q. Those contracts giving the right to lay the lines were made during your administration?

A. Yes, some of them.

Q. Do you know whether there was a telephone line or telegraph line belonging to this pipe line in 1920?

A. In 1920 the telephone or telegraph line did not parallel the pipe line. It paralleled the pipe line from the Louisiana line up to Mandeville, then from Mandeville it came into Texarkana over some other pole lines, and from Texarkana went north on the highway to the city of Index.

That is, it was just a wire, no poles. We paid an annual rental for the permission of having our wires attached to the poles of some other company.

Q. Do you know the value of that wire per mile?

A. About $15.00 per mile.

Q. It was just one wire?

A. Just one wire, No. 9 steel wire.

Q. The poles did not belong to the company?

A. No.

Q. The telephone company gave the permission to have your wire on their poles?

A. It was the Bell Telephone Company down to Texarkana. It might have been the Western Union or the Missouri Pacific to Mandeville.

Q. Mr. Black, there were 7 seven years passed that has not been paid and now suit has been brought by the road district either against yourself or the Standard Pipe Line Co.?

A. None is brought against the Prairie Pipe Line Co.: I don't know about the Standard.

Q. How much land is occupied by this pipe line?

A. Each line occupies a space of not more than 9 inches wide.

Q. Estimate the acreage actually used by your company?

A. About 9/100 of an acre to a line per mile.

[fol. 114] Q. Upon what does the earnings of that pipe line depend?

A. Depends upon the traffic or the charges received on account of the transportation of crude petroleum oil that has been tendered to it for transportation as a common carrier.

Q. Then it depends upon the transportation of crude petroleum?

A. Depends upon the production and the demand somewhere.

Q. Is there an inexhaustible field of petroleum where your lines have been laid?

A. It has never been discovered. The common experience of mankind with the deposits of oil is being exhausted, that the old and established fields are declining in production and new production coming on.

Q. When you cease to have oil tendered to you your revenues will be decreased?

A. When the oil ceases to be produced, yes, the system will have no value beyond a junk value. It will have no value as a pipe line transportation company.

Cross-examination.

By Mr. Moore:

Q. Instead of the production of your lines decreasing, it has increased very much of late, has it not, the oil that is being carried through your lines here in Miller County?

A. We have no lines in Miller County, Mr. Moore and I haven't any knowledge as to the business which the Standard Pipe Line Company of Louisiana conducts.

Q. You have heard the testimony that instead of using two 8 inch lines through Miller County, that they are now using 4 8 inch lines?

A. I have heard that.

Q. Would it not be very bad business judgment to have two 8 inch lines and to build two additional lines unless you have production to carry through those lines?

A. I agree with you that it would, still I have no personal knowledge of the amount of oil they are carrying.

Q. You must not know that instead of the oil in Oklahoma decreasing it has been increasing in the last two years?

A. No sir, I do not know that, and I do not think you do.

Q. Do you know it has been decreasing?

A. I haven't any personal knowledge of that either. The only information I have was from the report published by the American Petroleum Institute and those reports are based upon information from the United States Geological Survey and from the different companies in the field.

[fol. 115] Q. But those reports and your general knowledge in the industry, would you say that it is likely to continue in the future as an industry and as stable one as long as this sawmill industry?

A. I would not because the products which is used by the saw mill though being depleted, is being re-supplied by reforesting by the government, while we do not know what the deposits of oil is. We do know that the supply is not

being augmented by the efforts of nature or the ingenuity of man.

Q. But we do know that the supply is being augmented?

A. The production is being augmented, the supply will never change.

Q. Well, call it production. There is nothing to indicate in the immediate future that these lines in Miller County will have to be junked because of lack of oil?

A. Every indication points to the approach of that state.

Q. Is there any change in the indications now from what it was two years ago in 1923 when these two additional lines were built?

A. Yes, we thought it was, that is, that they had the enormous flush production in the State of Oklahoma, that has fallen off about 50% of what it was. The fields in Texas to which the Prairie Pipe Line Co. laid the two 8 inch lines to take care of 60,000 barrels has only produced 10,000 barrels with five competing pipe lines in there.

Q. You don't know of anything to indicate that these lines are not being used now to as full capacity as at the time you sold them?

A. If they are not being used any more, they are not being used much. We wasn't using them much then.

Q. You stated that Mr. Hillford was in charge of the pumping plant here in Miller County during the time your company owned these lines?

A. He was the operating superintendent.

Q. Did he not have an office in Texarkana?

A. He did.

Q. And was in charge of superintending and looking after the pipe lines and the pumping plant in Miller County?

A. Looking after the operation of the pipe line and the pump station.

Q. Had his office in Texarkana, did he not, had a direct telegraph wire that went to the home office in Kansas?

A. There was direct telegraphic connections, private wire.

Q. And did he not make daily reports to the company in reference to matters concerning them in this section?

[fol. 116] A. No; he made certain reports which are required daily, that is, he reported each day the amount of oil

that passed a certain station. He reported any leaks that came upon the lines, he reported any catastrophe that might happen to it, he reported anything else, but he was not in any sense a business agent of the company.

Q. You have given a statement as to the amount of taxes paid for the years 1916, 1917 and 1918. When did you take charge of paying those taxes?

A. July 1918.

Q. The taxes had not been paid for this road district for 1919?

A. It was not due until the next April after I took charge.

Q. When did you first learn that road taxes were assessed against the pipe line company?

A. Sometime after I took charge of the tax department in going through the Arkansas files I discovered the files with reference to this Miller Highway Bridge Improvement District.

Q. That was during the summer or fall of 1919?

A. Prior to the time the taxes were due the next April, which was 1920.

Q. Then you knew sometime during the year 1919 that there was a road district in Miller County that was assessing taxes against the pipe line?

A. I did.

Q. And during the year 1919 at your instigation this first suit to enjoin the collection of road taxes was brought?

A. Absolutely.

Q. And similar suits at your instigation were brought during the years 1920 and 1921?

A. Absolutely, every one. I went through these files and I think I made a trip to Texarkana and went over the records here. I discovered that Mr. Van Tuyl had an erroneous conception of what this assessment of tax was and when I familiarized myself I made up my mind that that tax was so flagrantly discriminatory that it violated rights of my company guaranteed to it by the Constitution.

Q. Then you knew about this road being in existence and attempting to collect taxes during 1919?

A. I did.

Q. When were you in Miller County first during the year 1920?

A. The latter part of March.

Q. And when were you here again, if at all?

A. A year later.

Q. You were here only once in 1920?

A. Only once.

Q. Did you make any investigation at the time you brought this injunction suit in 1920 as to the amount of taxes?

[fol. 117] A. Yes, I knew what the amount was.

Q. In making that investigation did you not learn that a re-assessment had been made during the year 1920?

A. I do not think that was in March, 1920. I knew nothing, or heard nothing, as I stated before, the first knowledge that I had of a re-assessment came to me when I came here about March, 1921.

Q. But you did know there had been the first assessment?

A. I knew that there had been an attempted assessment.

Q. It was an assessment, a lien and a cloud. You knew there was an assessment in March, 1920 and you learned when you came back to pay next year's tax that there had been a new assessment?

A. Yes, sir.

Q. What was the cost in the increase in the amount of taxes collected, was it caused by a bigger rate in the assessment benefits or caused by an increase in rate charged?

A. It must have been in rate charged because there was only an increase of $200.00, Mr. Moore. I took it from Mr. Van Tuyl's record that he thought the ultimate tax to have been paid by this company was $5,934.00. He was willing to pay $5,000.00 but I wasn't willing to pay $60,000.00. That is what this first voucher that we paid contained the statement that the total tax to be paid was $5,934.00, one fifteenth of which is $395.60. That was his conception of the tax.

Q. Have you ever been out over this road to the plant at Mandeville that is owned by the company?

A. Never.

Q. You never have been to Mandeville?

A. Yes sir, I went over the Missouri Pacific.

Q. Then you left the Missouri Pacific at the station at Mandeville?

A. That was in 1915, Mr. Moore.

Q. Then you have never been to Mandeville since the road was completed?

A. No, sir.

Mr. Arnold: We will introduce the exhibit referred to a moment ago. It was the certificate from the Arkansas Railroad Commission showing the assessed valuation of property of this Company as being personal property.

Said certificate being in words and figures as follows:

"Exhibit H, JKP

Pipe Line Certificate

Name of Company: Prairie Pipe Line Company.
Address: ——.

Value of real estate used in operation, pipes, telephone equipment, regulators, services, meters, machinery, and [fol. 118] equipment, couplers, materials, right-of-way, office furniture and fixtures, and all other property used in operation belonging to or operated by the above-named company on the first day in May, 1920, located in the county of Miller, State of Arkansas, and in the cities and incorporated towns of said county, as fixed by the Arkansas Railroad Commission for the year 1920.

School Districts

No. or name of school district	Description of property	Valuation in school district
15	Value Pipe Line Machinery etc.	27,384
25	" " " " "	30,604
28	" " " " "	33,712
35	" " " " "	38,584
37	" " " " "	9,044
1	" " " " "	36,288
14	" " " " "	12,628
34	" " " " "	24,248
2	" " " " "	157,164
7	" " " " "	2,240
19	" " " " "	10,984
30	" " " " "	1,036
39	" " " " "	28,924
2	" " " " "	17,080
32	" " " " "	42,700
20	" " " " "	23,324

No. or name of school district	Description of property	Valuation in school district
23	" " " " "	51,380
36	" " " " "	25,200
Total		572,488

Cities and Incorporated Towns

For City Taxes Only

Town or city	Description of property	Value in city or town
Texarkana	Value all personal property	2240

NOTE.—This assessment includes all property used in operation, both real and personal.

Office of Arkansas Railroad Commission, Tax Division, Little Rock, Arkansas

I, E. W. Brown, Secretary of the Tax Division of the Arkansas Railroad Commission, do hereby certify that the [fol. 119] above is a true and perfect statement of the value of all property belonging to or operated by the Prairie Pipe Line Company on the first day in May, 1920, located in the County of Miller, State of Arkansas, and in School Districts, Cities and Incorporated Towns in said County, and to be taxed therein for the year 1920, as fixed by the Arkansas Tax Commission.

In witness whereof, I have hereunto set my hand and affixed the seal of the Tax Division of the Arkansas Railroad Commission this the 9 day of February, 1924.

E. W. Brown, Secretary Tax Division."

Plaintiff rests.

H. G. SANDERSON, a witness sworn on behalf of the defendants, testified as follows:

Direct examination.

By Mr. Moore:

Q. What is your name?
A. H. G. Sanderson.

Q. You occupy the position as collector for the bridge across Red River near Index, do you?

A. I do.

Q. How long have you occupied that position?

A. Since the first of September, 1923.

Q. In order to reach that bridge from Miller County, or to leave that bridge coming into Miller County, is it necessary to go over the good roads built by the Miller County Highway and Bridge District?

A. There is two ways to come in. You can come in over the Miller County Highway by Paup's Spur and Mandeville, or you can come in by the State line, but to go over the State line you have to go over part of the Miller County highway before you reach this State line.

Q. After reaching State Line you go on to that highway again, after you leave the State of Texas?

A. Yes, sir.

Q. I will ask you whether or not during the years 1923 and 1924 the Prairie Pipe Line Company were employing a large number of men in rebuilding or repairing their line through Miller County?

A. Yes, sir.

Q. Did the pipe line Company use trucks and haul any considerable number of men across that bridge over to the work that they had going on over the pipe line?

A. They hauled a great number of men from both sides of the river.

[fol. 120] Q. Have you a record that you have looked for showing during any month the amount of money that was paid you by the representative of the pipe line Company for crossing trucks over the bridge?

A. I find three checks that was given me for toll over the bridge.

Q. Give the dates and amounts of those checks.

A. October 13, 1923, $55.45; October 18, 1923, $55.00; October 25, 1923, $63.80.

Q. Now who paid you that money, and what position did he occupy with the pipe line company?

A. M. D. Lee gave me the first two checks and L. H. Cummings gave me the last check. They seemed to be in charge of the work.

Q. Those checks were given for crossings made by trucks or automobiles?

A. Yes, sir; I can explain to you we issued a receipt for everything that crosses the bridge, and you save them having the money each time a truck or man who would cross there asked me to hold those receipts for so many days and then the foreman would come around and take up these receipts.

Q. What was the amount per truck or car?

A. Automobiles 50c, trucks 75c and heavy trucks $1.00, and then they had a number of wagons, two mule and four mule.

Q. [When] those trucks came over there what was on those trucks?

A. Sometimes they would have pipe and sometimes tools maybe, and different things.

Q. Were there any trucks that ran regularly that brought a large number of men on them to labor on the pipe line?

A. Yes, sir, they had one white truck that seemed to be hauling men from Mandeville out to the river, made two or three trips a day.

Q. Now that truck would come from Mandeville out over these roads and then cross the bridge in Little River County?

A. When they crossed the river with the line, they would cross the bridge, but before that they would stop and the men went down the river from the bridge and worked on the line.

Q. In coming from Mandeville was there any way that a truck could come to the bridge save over these good roads in Miller County?

A. No, sir.

Q. You are acquainted with the system of good roads?

A. Yes, sir.

[fol. 121] Q. Now the amount you have given here, were those that crossed during three weeks' time?

A. I couldn't say how much besides this in money.

Q. In addition to this?

A. Yes, sir.

Q. For how many months did that work go on on the pipe line?

A. From the time I went there the first of September until the last of 1924.

Q. During the entire fall and part of the winter then?

A. The fall of 1923 and practically the whole of 1924.

Q. Now what were those men and trucks engaged in doing on the pipe line, if you know?

A. I couldn't say personally, I never went—I did pass, too, once, they were working on the line on the other side of the river. They were distributing pipe, digging ditches, putting pipe in, joining it up and painting.

Q. You say some came from Little River County across and a large number came out regularly form Mandeville?

A. Yes, sir.

Q. Do you know whether a camp was kept by the Company at Mandeville where these men stayed at night?

A. I couldn't say about that.

Q. Have you ever had any experience doing work either on good roads or farms or places where you have employed laborers?

A. Yes, sir, I have had considerable experience.

Q. You used to run a plantation in Little River County?

A. Yes, sir, I have one now in Miller County and one in Little River County.

Q. Did you not [assis-] in building some of the good roads in Little River County?

A. Yes, sir.

Q. From your knowledge of matters, is it or is it not an advantage where you are working men to have a good road by which these men may be transported back and forth to the work?

A. It is.

Q. From what you saw of the work along and over the pipe line, was it cheaper or more expensive to haul that pipe over this good road to where you could distribute it, than it would have been to have hauled it over the ordinary fields or dirt roads?

A. My opinion is that it is a whole lot cheaper.

Q. Over which could you haul the biggest loads, over the gravelled roads or over the fields and through the woods?

A. You couldn't haul the loads that they hauled over the country roads at all over common country roads.

[fol. 122] Q. Did they use trucks in bringing that pipe out?

A. A great deal of it they did, and they hauled considerable of it out in wagons.

Q. When it was brought on wagons was it hauled and transported along the pipe line, or put off in convenient places where it could be hauled out by wagons?

A. They had a dumping ground right close to the bridge where they unloaded for the trucks and then reloaded on wagons and hauled it down on the ground.

Q. Was that the dumping ground immediately joining the good road?

A. Right at the side.

Q. Then they would unload at the good road and then dump it and would haul it out on the good road?

A. That is the way I understood it.

Q. Where was that material hauled from?

A. I couldn't say about that, Mr. Moore. My understanding was they brought it from Mandeville.

Q. What is the distance from the bridge to Paup spur about?

A. It is about 7 and ½ miles.

Q. What is the distance about from Paup Spur to Mandeville?

A. It is a mile and a half, I judge.

Q. Did they haul any of the pipe over the bridge and distribute it at places over in Little River County?

A. Yes, sir.

Q. Now you have the amount of tolls paid during [the] about three weeks, paid in October, 1923, would that amount be about an average of what was collected during the time that this work was going on?

A. I would say that it would be over an average.

Q. Then they were doing more crossings and haulings then than the average?

A. That is when they were putting the pipe across the river.

Q. And were they hauling men across the river at the same time in those trucks?

A. Yes, sir.

Q. How much above the average crossing during this time from September until the next January or February would be the average in your opinion, per month of the tolls?

A. That would be—I couldn't hardly tell that, Mr. Moore, because as I tell you, the man that worked on the line lots of [time] they had paid their own toll, they had their own

cars and there would from 4 to 6 and 8 men come out in a car and they would pay their own toll. They would go from both sides of the river.

[fol. 123] Q. This you have given is what the company paid and a number of extra laborers worked on the line that would come on the line and pay their own [polls] in addition?

A. Yes, sir.

Q. Now give, in your opinion, in your own words your opinion of what advantage you think that good road is or was to the pipe line company if it was an advantage?

A. I would say that it lessened the expense at least half in hauling that pipe out.

Q. And what in reference to getting their laborers there?

A. It would be the same thing.

Q. Have you ever had any experience in running a boarding camp to keep laborers in?

A. Just in a limited way.

Q. Could you make any money or break even running a boarding camp?

A. Never did.

Q. Is it cheaper if you can get laborers without boarding them?

A. I would always rather they would board themselves.

Cross-examination.

By Mr. Arnold:

Q. Were these vehicles that you have referred to, were they all carrying pipe across the bridge into Little River County and beyond, or were they coming this way?

A. Both ways, Mr. Arnold.

Q. Bringing pipe into Miller County and bringing pipe out of the County?

A. Yes, sir.

Q. What was the reason they didn't swap pipe? Why didn't they swap pipe and be done with it?

A. My understanding was the pipe that they hauled from the north was the old line that they took up.

Q. What did they do with it? They brought it into Miller County?

A. Yes, sir.

Q. And came this way with it?
A. Yes, sir.
Q. You did not keep up with it after that?
A. I know, however, it went across the river.
Q. Into Little River County?
A. Yes, sir.
Q. And they were constructing some lines beyond there?
A. Yes, sir.
Q. Mr. Sanderson, you were one of the bridge commissioners?
A. No, sir.
Q. What connection have you with the bridge commissioners?
A. I am toll collector for the district.
Q. I thought you were one of the commissioners?
A. I was up to the time I took this job as collector, I resigned though.
[fol. 124] Q. This bridge was built under the improvement district plan?
A. Yes sir.
Q. And to help pay that out people who go across there pay about 50¢ for an auto?
A. Fifty cents for an automobile.
Q. And everybody pays that?
A. Yes, sir.
Q. And they pay it because they have the advantage of the bridge?
A. Everyone pays that much toll, yes, sir.
Q. And these people who were hauling this pipe line over into Little River County and beyond, they were paying just like anybody else to pay the bridge out?
A. No, sir, they wasn't paying to pay the bridge out, they were paying for the convenience they got.
Q. They paid the toll just the same as anybody?
A. Yes, sir.
Q. They were paying it just like anybody else?
A. Paying it because it was the law for everybody that crossed over it.
Q. If Mr. Moore went across he would pay?
A. He paid.
Q. And the pipe lines would have to do the same thing?
A. Yes, sir.

Q. This money went to pay out the bridge, didn't it?

A. Yes, sir.

Q. It was going to pay out that improvement district tax by reason of that?

A. Yes, sir.

Q. Now, in regard to the vehicles, after they got on the bridge, did you notice whether or not they had a tag on them showing that they had paid their taxes to go on the road and to run them on the road?

A. Most of the cars had license tags on them. The wagons never had any tags.

Q. They are not required to do it?

A. No, sir.

Q. Well, everybody is treated alike on that score, so far as you know?

A. Yes, sir.

Q. And these folks were paying their taxes to let their autos run on the road just like the balance of us?

A. So far as I know.

Q. Now then, this pipe that was carried from Mandeville, why should they go to Mandeville to get pipe when they could get it off the road at Texarkana or Paup Spur, or down at Ashdown, why should they carry that pipe all the way from Mandeville?

A. I couldn't say about that; all that I know is that they crossed the bridge.

Q. You don't know where they went from, do you?

[fol. 125] A. No, sir, I do not.

Q. It was not pipe then, that was brought in here to be used in Miller County Highway and Bridge District, the case that we have here before us? It was pipe that was going to be used somewhere else beyond the river?

A. It was pipe that they used in building the line beyond the river.

Q. They did cross the bridge so it was not the pipe that you have been talking about that was used in the Miller County Highway and Bridge District?

A. No, but as I stated, the pipe that was hauled out over the highway and dumped, that was dumped off in Miller County and was used in Miller County District.

Q. That old pipe?

A. No, that was new pipe.

Q. Did they take up some new pipe and bring it over here?

A. No, sir, I said the pipe that came from the north side of the river was old pipe that they had taken up and were hauling back this way.

Q. Do you say that they took up that old pipe over there and brought it over here to use in the construction of this line?

A. Yes, sir.

Q. How do you know that these trucks came from Mandeville?

A. I know that they came out over that road.

Q. Now their construction force was working on either side of the river?

A. Both sides.

Q. And wasn't this period that you have given, wasn't that while they were putting in that river crossing?

A. Oh, no, they were putting in a line on both sides of the river.

Q. Just simply because they crossed on that road did not mean they travelled on the road?

A. I could see them a mile and a half down the highway. As far as I know they hauled it out on wagons.

Q. You mean to say they took it over on trucks and reloaded it on wagons?

A. That is what they did.

Q. You say they were saving half the cost of it if they had to take it over and dump it and reload it on wagons, how can you say?

A. Just simply because they could make so many more loads with a truck.

Q. Didn't they have to load that many more, and if they did not put it on wagons they would not have to load it but once?

A. That is true.

Q. How can you say it would reduce the cost?

A. They would haul four or five joints of pipe on a wagon where they would haul 12 to 15 on a truck.

[fol. 126] Q. They would take that as far as they could and then re-load it on wagons?

A. They had wagons that was distributing that pipe along the line while they were working.

Q. It cost a good deal to run a wagon?
A. Yes, sir.
Q. What does it cost?
A. I couldn't say.
Q. You don't know whether they have to spend as much for mules and wagons as you do for a truck?
A. No, sir.
Q. Have you had any experience in pipe line construction?
A. No, sir.
Q. What you have testified here is just from your observation?
A. Just from general knowledge.
Q. Have you ever had any experience in hauling anything by truck and knowing the cost of it?
A. Very little.
Q. If a man comes along there with a load or team, he pays the price on his load?
A. He does.
Q. He pays the regular fee prescribed by law to go across that bridge?
A. He does.

Redirect examination.

By Mr. Moore:

Q. You have had a good deal of experience in your lifetime in hauling different kinds of articles all the way from cotton up to logs and lumber?
A. Yes, sir.
Q. Do you know you can haul a heap bigger load over a hard surface road than over an ordinary dirt road?
A. Yes, sir.
Q. That is just common sense that anybody learns?
A. Yes, sir.
Q. There is a telephone at your office at the bridge?
A. Yes, sir.
Q. They asked you how you knew that these parties came from Mandeville. Do those various parties crossing ever use that telephone to call up Mandeville?
A. They did.
Q. Did they use it occasionally?

A. Not very many times. They had cars and trucks going nearly all the time.

Q. You mentioned that you can see that road nearly a mile and a half from your office at the bridge. Could you not see whether those trucks turned to left and therefore went to Mandeville that way, or whether they turned to the right?

A. They turned east and went towards Mandeville.

Q. You saw that from your office at the bridge?

[fol. 127] A. I did, yes, sir.

Q. You have mentioned that this old pipe was hauled into Miller County and that new pipe to be laid was hauled from towards Mandeville over the bridge into Little River County?

A. Yes, sir.

Q. What kind of road is it from the bridge to Ogden?

A. Dirt road.

Q. What is the character of that road when heavy hauling is over it?

A. In the winter time it gets very nearly impassable.

Q. Then which would have been the cheapest, to haul from Paup Spur over the bridge over this hard surface road, or to have hauled pipe from Ogden, a short distance over on that dirt road?

A. For a short distance on the north side of the road it would have been cheaper to have hauled it from the railroad at Paup Spur or Mandeville than to have hauled it from Ogden.

Q. Isn't that the reason?

A. I suppose so.

Q. Anyway, regardless of the reason, you do know that they hauled that new pipe from Mandeville over the river into Little River County, and where they picked up the old pipe they hauled it into Miller County?

A. I do. I suppose it went towards Mandeville.

Q. It was going towards Mandeville as far as you could see it?

A. Yes, sir.

April 22, 1925, 8:30 A. M., Court met pursuant to adjournment.

Mr. Arnold: If Your Honor please, in the examination in testimony in chief we introduce the map that we had yesterday. It is a verifying map and complete within itself except two or three respects with reference to one or two of these roads that he could not get except from the records of the road district, no public record of it, but I want to introduce it as it covers every material point that the map would affect, so far as this case is concerned.

The Court: What are the material points?

Mr. Arnold: With reference to the location of the pipe line and these roads that are in proximity, I want to introduce that by Mr. Fulton as soon as he comes in.

The Court: That was the map that was referred to by the engineer in chief?

[fol. 128] Mr. Moore: If Mr. Arnold will just wait, as soon as Mr. Christian comes I am going to introduce a map which is in more detail than that.

Mr. Arnold: I do not consider it so, Your Honor.

The Court: The point is whether it is going to reach any issue that is before the Court.

Mr. Arnold: It is a more complete map so that by looking at it you will see just what is involved with reference to the location of the pipe lines and road, and we want to complete our evidence in chief. What they shall introduce, I do not know. We are offering this map which was identified yesterday.

The Court: Well, the fact that there may be two maps, I do not know that there will be any objection.

Mr. Moore: I can't object to it.

The Court: All right, it will be received.

D. B. Owen, a witness sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Moore:

Q. What is your name and residence?

A. D. B. Owen, Texarkana, Arkansas.

Q. Were you living at Texarkana during the months of June, July and August of the year 1921?

A. Yes.

W. B. FULTON, being recalled, testified on behalf of the plaintiff as follows:

The Court: The map will be received in evidence.

Q. Has anything been added to this?

A. On road by the yellow line.

Q. Mr. Fulton, does it show the bridge?

A. Yes, sir.

Q. Will you mark the word bridge?

A. The bridge is shown in the regular manner.

D. B. OWEN, being recalled, testified as follows:

Q. For how many months did you say you worked for the Prairie Pipe Line Company?

A. During the summer of 1921, I think it was, about there, two and a half to three months.

Q. What position did you occupy with them?

A. I was time-keeper.

[fol. 129] Q. Did you also look after the unloading or checking of materials?

A. Part of the time, yes, sir.

Q. What was the company doing during 1921?

A. They were putting in a loop from Ogden across Red River to the Junction and the good road between Paup Spur and Index, they were putting in a line there to take the place of old No. 1, which was the fartherest line east.

Q. For what length of time approximately were they engaged in this?

A. I think it was about 2½ or 3 months.

Q. What months of the year were those?

A. It started in June and in July and in part of August.

Q. During that time approximately how many men were engaged in the work?

A. Well, I don't remember the lowest number; of course it ran up, at one time I think I had about 85 or 90, was the largest number I had at any time.

Q. Where did those men live while on the work?

A. Most of them had residences in Texarkana and scattered around over the country. Mr. Hillford was superintendent, head of the job, and he tried to work local people as much as he could. That was his policy at all times with the Prairie Pipe Line Company.

Q. How did those men come to their work, that time, by what means?

A. Automobiles and trucks, mostly.

Q. Where did those automobiles and trucks principally come from?

A. Great many of them were from Texarkana.

Q. Did the Company furnish the means of conveyance to many of those men?

A. Part of them, yes, sir, but one or two trucks all the time of their own, or hired for the occasion.

Q. What distance is it from Texarkana to the point where this work was in progress?

A. Well, it varied from 10 to 15 miles, I should say.

Q. What roads were used in going from Texarkana to the work?

A. The State Line road and by the way of Mandeville and Paup Spur, both places.

Q. Those are parts of the improved road of the Miller County highway system?

A. They are hard surface roads.

[fol. 130] Q. Have concrete bridges and gravel over the road?

A. Yes, sir.

Q. Where in Texarkana did the men collect and load themselves on those trucks to go to work, if you know?

A. Well, those who rode on the Company trucks would meet down by the State National Bank, usually the trucks would come by the box factory and on up State line, and they would load on there. And others had their own cars. Some of the workmen owned their cars and they would haul out a truck load. They would pay so much a day per trip.

Q. Did the Company pay for those trips that were made?

A. Not the private conveyances.

Q. They furnished their own trucks to haul them?

A. Yes, some of them, when they had their own trucks they would carry the men for nothing.

Q. What other materials or supplies were hauled from Texarkana out on to the work?

A. I don't remember much that was hauled from Texarkana.

Q. Was there any ice deliveries?

A. Oh, yes, ice was hauled out daily while we were at work, one of the company trucks would haul out the ice, or one that we employed for that purpose.

Q. What character of material was used in doing this work?

A. Well, there was pipe, 8-inch pipe, and then in the river crossing between the levees we had what was known as clamps, those heavier pieces of iron, I guess they would weigh 400 pounds to put around the pipe and hold it in the ground in case it should be washed out.

Q. Were any welding tools of the materials used?

A. Yes, in the river crossing.

Q. At what railroad crossing were those clamps and pipe and other materials unloaded?

A. I think the most of it was unloaded at Mandeville, that is my recollection. Some of it may have been at Texarkana. There was some hauling from both places.

Q. Was the pipe itself unloaded largely at Paup Spur?

A. I meant Paup Spur.

Q. You meant Paup Spur when you said Mandeville?

A. I think all the pipe from the river out to the Junction, right close to two miles, was unloaded at Paup Spur; all that went in the ground on this side of the river.

Q. About how many cars of pipe were unloaded there?

A. I do not remember; it seems to me it must have been 12 or 15; I do not remember exactly. Just enough what went in the ground for the two miles of pipe.

[fol. 131] Q. And also the pipe for the river crossing?

A. No, that was unloaded at Ogden, is my recollection about that.

Q. Were the river clamps unloaded at Paup Spur, those heavier clamps that you speak of?

A. That is my recollection, yes, sir.

Q. Now the other pipe that you mentioned that you think was unloaded at Ogden, was any of that hauled back across the bridge to this side?

A. Very little, may have been one or two joints. We unloaded at Ogden, being the other side of the river, and at Paup Spur on this side, to avoid the toll.

Q. After that pipe was unloaded how was it hauled out for distribution?

A. Well, wagons and trucks, mostly trucks, I think.

Q. When those trucks hauled it out where did they unload the pipe? at what distributing point?

A. We had one distributing point on the side of the road between Paup Spur and Index. I don't remember unless I could indicate it by a little club house that was along by the side of the road. That was to be distributed through the woods and along that section.

Q. That club house is something more than half way as you go from Paup Spur to the bridge, is it?

A. Yes.

Q. Where was the other distributing point?

A. We had another one down by the side of the levee, right close to the river, below the bridge, east of the bridge.

Q. Were those distributing points both immediately adjacent to this hard surface gravelled road?

A. Well, one was, and the one by the side of the levee was probably a half mile or three quarters off the road, but they would go around the road to the bridge and then down by the side of the levee.

Q. Now after that pipe was unloaded at those distributing points, did the trucks then,—how was it taken to the place where it was put in the ground?

A. Distributed with wagons and teams.

Q. Do you know why the trucks did not go right to the distributing points themselves?

A. Well, it was a little rough for the trucks to go in there and probably the ground was too soft, some of it through the woods.

Q. It was over roads that trucks could not go then?

A. Yes.

Q. Over these hard surface roads could trucks carry practically as much pipe as could be loaded on them?

[fol. 132] A. My recollection is they carried on them anywhere from 10 to 15 joints.

Q. Do you know who did the distributing with wagons after the trucks had unloaded it at these two points?

A. No, I remember one man, Charley Bruner. Mr. Baton had some teams on the job for a few days, I don't just remember who they were now.

Q. About how many pipes could a wagon haul over this rough road after you left the wagon road?

A. Three or four joints.

Cross-examination.

By Mr. Arnold:

Q. Mr. Owen, give the date that you were employed by this company?

A. The last time?

Q. Well, about which you have been testifying.

A. That was in 1921. I don't remember the exact date, but it was sometime in June, Mr. Arnold, when I started on this job.

Q. During what period of time, what months was it in 1921, if you remember that you were time keeper?

A. June, July and part of August.

Q. Were you employed by the Prairie Pipe Line Company or Standard Pipe Line Company?

A. Prairie Pipe Line Company.

Q. You were the time-keeper, were you?

A. Yes, sir.

Q. Where was your place, at what place were you performing your work?

A. Well, out on the line, I would go out every morning with some of the trucks or automobiles and then come back in the evening some time and walk to the office, if I got back in time, and work for awhile.

Q. From what point to what point was this new line laid?

A. From Ogden across the river to what was called the junction of the two lines, right by the side of the good roads between Paup Spur and Index.

Q. Was it on the north side of the river or the south side that this work was done?

A. Both.

Q. How much of it was south of the river in the Miller Levee District?

A. About two miles is my recollection.

Q. How much was south of the river in Miller County Highway and Bridge District?

[fol. 133] A. Well, if you will tell me what territory embraces that, I can tell you, but I am not acquainted with the boundaries of the highway district.

Q. Well, do you know where the pipe line crosses the Red River?

A. Yes.

Q. Do you know which is the south bank of Red River?

A. Yes.

Q Taking that as a starting point, how much of this work was done while you were timekeeper along a line extending south of Red River, about two miles?

A. It seems to me it was a little bit more.

Q. This side of the river?

A. Yes, sir.

Q. How long did it take to lay that two miles of pipe?

A. Well, I think we were working at it 30 days, off and on, it seems like we were. We did not have much of the crew for the stringing; most of our crew came after the pipe commenced to be laid.

Q. What is your understanding of the meaning of stringing the pipe?

A. Laying it along the right-of-way.

Q. Does that include the hauling?

A. Yes, I think it would, yes, sir.

Q. Was that a single line of pipe that you refer to?

A. Yes, just one line of pipe laid at that time.

Q. Was it laid in place of an old pipe, or was it a new pipe?

A. It was new pipe and new location.

Q. What is the distance from Mandeville to this clubhouse where the pipes were unloaded?

A. I would judge it would be about 6 miles, 5 or 6, I don't remember. About 5 or 6 miles would be my judgment.

Q. The pipe itself that you have referred to, and materials, that—from Mandeville to the clubhouse.

A. No, from Fouke Spur.

Q. Well, how far was it from Fouke Spur to this place where the pipe was unloaded?

A. Four or five miles I think.

Q. Fouke Spur is between Mandeville and Index?

A. Yes.

Q. Now Mr. Owens, the road from Mandeville by Fouke Spur around to Index, that is one of the improved roads?

A. Hard surfaced road.

Q. That road leads along the margin of the river bottoms, the west side of Red river in Miller County, margin of this bottom next to the river, near the river?

[fol. 134] A. Quite a distance from the river I think, until it gets around close to Index.

Q. Well, what I would like to know, that it is the road along the west side of this Miller County Highway and Bridge District?

A. It is not, no sir.

Q. To Texarkana?

A. Oh no, it is nearer the river than it is Texarkana I would judge.

Q. Now the other road that leads from Texarkana to Index, that is along state line?

A. Yes.

Q. And it is an improved road?

A. Yes.

Q. And there is a road going from Texarkana to Mandeville, is there not?

A. Yes, sir.

Q. And it is also improved?

A. Yes.

Q. Now state whether or not these roads have been there a long time as public roads before this improvement was made upon the roads?

A. Before they were hard surfaced you mean?

Q. Yes?

A. Well, I know the Mandeville road was a public road some time before the improvement.

Q. Don't you know that it is an old road?

A. That is my recollection.

Q. Don't you know that is an old road from Texarkana to Index for years?

A. I don't know whether I ever went,—yes, I did, I have been over it.

Q. What about that dirt road that went over the other way, how do those people get in there?

A. I don't know Mr. Arnold, I was never through that part of the country before the roads were put down.

Q. Now there is a railroad running from Texarkana to Index?

A. Yes.

Q. And it also extends beyond, the Kansas City Southern Railroad by Ogden and Ashdown and on up that way?

A. Yes.

Q. Now this pipe that you refer to that was laid beyond the river on the north side of the river, where was that unloaded?

A. At Ogden.

Q. Now with reference to the road from Ogden down to the bridge, is that a hard surfaced road, or is it a very poor road?

A. It is a very poor road.

Q. The pipes were hauled along that road for distribution?

A. Yes.

Q. And they were laid north of the river?

[fol. 135] A. Yes, sir.

Q. And those pipes that were in the two mile extension, they were unloaded at Mandeville and carried around Fouke Spur to a point near where they were needed?

A. Yes.

Q. And then when they were put there, they were subsequently put on wagons and carried along the right-of-way and strung along and put down. Is that a fact?

A. That is a fact.

Q. And you were the timekeeper?

A. Yes.

Q. For about three months?

A. For about three months.

Q. Do you mean to say it took three months to put down those pipes, the two miles?

A. We were not putting down all the time I was working for them. From the time the job started they began to

accumulate material. I was time keeper while the job went on, but that wasn't all the duties that I performed.

Q. It did not take you all of the time?

A. No.

Q. Nor it did not take the men all that time to put down the pipe?

A. No, it took about two months is my recollection, by the time the job was completed.

Q. Was the new line laid along the right-of-way of this company, or was it laid in a different place?

A. In a different place.

Q. How far from this original line?

A. Well, it didn't go near the original line. From Ogden the original line, that is old what they call No. 1 line across the Red river to four miles on that, it is east of Index and the line crossed right at Index. Instead of going east from Ogden as the old line originally went, it came directly south across the river at Index.

Q. Was the old line abandoned?

A. Yes, sir.

Q. How much mileage was there of this old line that was abandoned?

A. I don't know Mr. Arnold.

Q. Was that taken up?

A. I was told so; I wasn't on the job.

Q. Was it an old pipe line?

A. The first one that was put in.

Q. That was abandoned and this new line was put down below there east of it?

A. West of it.

Q. West of it?

A. Yes, west of it.

Q. That would throw it over in Texas?

A. No, sir.

[fol. 136] Mr. Black:

Q. Assuming that there were no good roads in the territory, or assuming that this line was laid prior to the building of hard surfaced roads, where, in your opinion, would the company have unloaded the material with the reference to the places it did unload it at the time the line was built?

A. I imagine they would have unloaded it on the Kansas

City Southern, Mr. Black, I don't know that would have been my opinion about it. There is a switch between here and Index, at that place they did unload a lot of material once on another line across from Red river before the hard roads were put in.

Q. Is that as far from the line as Fouke Spur?

A. No, it isn't quite so far.

Q. Now this new line that you laid in 1921, how much total mileage is that line?

A. Right around two miles.

Q. Two miles south of the river and a mile north of the river?

A. Yes, sir.

Q. Now I do not know whether I understood you in your examination by Mr. Arnold, how long did it take to construct that two miles south of the river?

A. I don't remember Mr. Black, they were unloading and hauling there I imagine for two or three weeks. We did not have much of a force.

Q. Was that a continuous proceeding?

A. No, some days it would rain and the men would not work, and things like that. We were at it about three weeks stringing the pipes, is my recollection.

Redirect examination.

By Mr. Moore:

Q. Who was the man in charge of this work representing Prairie Pipe Line Company?

A. J. B. Hillford.

Q. He was in complete charge of everything?

A. Yes.

Q. You took your orders from him, and all the men did?

A. Yes.

Q. You have mentioned that you think if there had been no good roads that this would have been unloaded on the Kansas City Southern at Watley?

A. Yes.

Q. About how far east from Watley to Index?

A. It is right about five miles I think. I don't know the exact distance.

[fol. 137] C. S. CHRISTIAN, a witness sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Moore:

Q. What is your name?
A. C. S. Christian.
Q. And your residence is Texarkana?
A. Yes, sir.
Q. And has been for many years?
A. Fourteen years.
Q. What is your profession?
A. Civil engineer.
Q. You were the engineer when the Miller Levee District was built and are still its engineer?
A. Yes, sir.
Q. Were you jointly with Lund & Hill of Little Rock the engineers who laid out and supervised the building of the good road in Miller County Bridge and Highway District?
A. I was.
Q. During what years were those roads built?
A. I tihnk in 1917 and 1918.
Q. Completed within the year 1918?
A. As I remember it. I would not be positive, but I believe that is right.
Q. I show you here a blue print and will ask you if that is a map of Miller County showing the boundaries of the Miller County Highway and Bridge District?
A. Yes, the boundary line of the Miller County Highway and Bridge District is shown in yellow and the location of the various roads is shown in red pencil.

The Court: That means the improved roads of the district?
A. Yes, sir, those are the improved roads in the districts.

Q. Go ahead. How is the pipe line shown?
A. The pipe line is shown in dark red and noted on it Prairie Pipe Line. It does not show the line that was taken out. The line that was taken out was the line from the junction in Section 22 going due north across Red River, that line was abandoned.

Q. That line shown going due north was in 1920 and has since been abandoned?

A. Yes, sir.

Q. And these other lines crossing the junction across Red river at Section 8, was a line built to take the place of the abandoned line. Since the additional lines have been laid [since then], and the line laid to take the place of the abandoned lines has since been abandoned and all of the lines through Section 7 across Red river just east of the bridge.

[fol. 138] Q. Since 1920 both of those lines from the junction down have been abandoned and have been relaid up close to where the bridge is?

A. Yes, sir.

Q. Now at the point where the river is crossed you show a marking in red with the word bridge, is that the location?

A. That is the location of the bridge across Red river.

Q. Show which is the location of the Kansas City Southern?

A. The Kansas City Southern Railroad location is marked on the map. It lays wholly in Texas.

Q. How is that marked?

A. K. C. S. R. R.

Q. Show the location of the levee and the boundary of the Hill Line?

A. The location between the Hills and the levee district.

Q. How is that marked.

A. It is marked with a rather broken line designating the hills.

Q. Show the location of the Missouri Pacific Railroad formerly the St. Louis Iron Mountain Southern?

A. It runs northeast from Texarkana through Mandeville and Paup Spur.

Q. That parallels the hard surfaced road to a point within two or three miles of Fulton, does it?

A. Yes, they are practically parallel all the way.

Q. Now examine the map and see what is the furthest point within the district where the pipe line is away from the good roads?

A. Between a mile and a half and two miles, less than two miles and probably a little over a mile and a half.

Q. At how many places do the good roads cross the pipe line within the district?

A. Four.

Q. And they reach within a mile and a half at the farthest point of every section of the pipe line?

A. Probably a little over a mile and a half; between a mile and a half and two miles.

Q. At the time work was commenced on these hard surfaced roads, what was the character of soil from Texarkana through Mandeville down through the bottoms, on the road leading from Texarkana to Paup Spur?

A. Well, many places it was very sandy and other places where a road had been there a long time the natural erosion had washed the tops all away and had gotten down to a hard clay.

Q. From a point where the bottom is reached to Paup Spur and then turn to the left on to Index, what is the character of the soil?

[fol. 139] A. Well, practically all stiff buckshot.

Q. From Texarkana going by way of Paup Spur to Index was there a road all the way when work was commenced on this hard surfaced road?

A. No, there was road from Texarkana to Paup Spur and then there was about a mile, going out to what is known as the Car Bend place. From that point to Index there was no road at all.

Q. That is, neither a county road or an open neighborhood road?

A. No, there was no roads in there then.

The Court: You say there was no road from Paup Spur to Index?

A. No, sir; that was opened by the Highway District.

Q. When the Highway District went in there to open it, was it through a wood country or through open country that was being farmed?

A. Well, a little of it was through open country but the greater portion of it was through woods. The District petitioned for the County Judge to open that road.

Q. It had to be opened by the County Judge so it could be built?

A. Yes, sir.

Q. When you started work on that road was there any way that you could get through there by automobile?

A. No, sir, could scarcely get through with a horse.

Q. Could you use wagons and horses in going through there?

A. No, you couldn't get through there except on horse back, that was the only way we could get through it.

Q. On the roads that were county roads from Texarkana to Paup Spur and a mile on toward Car Bend, what was the character of the road as to the surface or the condition for the purposes of vehicular traffic?

A. Well, the road was in rather bad condition. There were times when it was [impass*ible*], you couldn't get over it at all. It was just an ordinary country road, had very little work and very little improvements ever put on it.

The Court: What road is that?

A. From Texarkana to Mandeville and Paup Spur.

Q. What was the condition of the bridges on that part that was a county road when you commenced work, what kind of bridges and what conditions were they in?

[fol. 140] A. Most of them were wooden and in bad condition. There was one steel bridge over McKinney Bayou, was the only permanent bridge, and its floor was bad.

Q. With the condition that that road was in at that time could an automobile, trucks and automobiles have been used for hauling material or men? I am speaking of the county road?

A. Well, there might have been a time during the very dry season when that might have been used to some extent, but they couldn't have hauled any loads to have mentioned.

Q. It had only a natural dirt surface?

A. That was all.

Q. What would have been the effect in a dry season of continuous hauling of heavy loads by trucks?

A. Well, it would have cut up so badly until it would have been practically [impass*ible*].

Q. Were there any creeks or ravines or depressions between where the road now is and county road and Index over the line of this hard surfaced road that has since been built through?

A. Yes, we crossed—there were several depressions where we had to put in culverts and then we crossed Cedar Creek where we put in a short bridge.

Q. Before the bridges were put over this was it possible to cross the depression of Cedar Creek with wagons or trucks?

A. No, you could cross it during the dry season close to the river, but that was the only place you could cross it.

Q. What was the character of the road, if you know, between the bridge at Index and Ogden during the years 1922, 1923 and 1924 as to being improved or unimproved?

A. Well, it was unimproved. They have never had an improved road.

Q. It is still unimproved?

A. Yes.

Q. That is across the river, from the river until you reach the town of Ogden?

A. They have graded a little in the last couple of years, but they have never had an improved road.

Q. You still have charge of these sections of it that have not been taken over by the State Highway?

A. Yes, sir.

Q. Does that give you occasion to use this road in going out over them making examinations?

A. Yes, sir.

Q. Do you know whether a pipe line company during the year 1921 hauled any men and materials over these roads for work on that pipe line?

[fol. 141] A. I can't definitely state the time, but I have seen them any number of times hauling that material out from Paup Spur over the roads.

Q. You know do you that during the year 1923, and possibly part of 1924, they laid additional lines of pipe in the Miller Levee District?

A. Yes, they unloaded a lot of their pipe at Paup Spur, it was a block from where we unloaded gravel there.

Q. Used the same side tracks that you used for gravel for repair work?

A. They used the side track that the Highway District built and paid for and one that they had always used.

Q. They had the benefit of that side track for unloading their material at Paup Spur?

A. Yes, sir.

Q. For what length of time, if you know, were they doing this work and hauling men and materials over the road?

A. I couldn't state the definite time Mr. Moore, I don't know.

Q. You as an engineer, or have you as an engineer, had experience in moving heavy materials of various kinds?

A. Yes, sir.

Q. In your opinion is it or is it not an advantage where you have heavy materials to move to have hard surfaced road over which you can move these materials rather than an ordinary dirt road?

A. Well, it is a decided advantage to have hard surfaced road to haul over.

Q. Explain wherein that advantage lies?

A. Well, you can increase your load limit and you can get a higher speed so that you reduce your handling cost. We have a case right now at hand where a Hutcheson machine has just finished up down at the Dooley Ferry road and he has attempted to truck over to the end of the Dooley Ferry road so that he can come out with trucks and load them at the end of the road and bring them on in town, otherwise he would have to haul it over in wagons.

Q. From your knowledge of engineering and your experience doing work, would you consider that any advantage had accrued to the pipe line company from being able to move its men and material for repair and work over this line of road between Texarkana and Index?

A. I think it would be a decided advantage to them.

Q. What is the character of that road as built by the Miller County Highway and Bridge District insofar as the bridges are concerned and the surface material. Just describe what kind of road has been built?

[fol. 142] A. The culverts are of concrete. There are a few bridges that have been built that have concrete abutments, but they have wood sills, others have steel stringers and with a wood floor attached. On the wooden bridges they have 13 lines three by fourteen with the stringers in them making them of ample strength. And there was 8 inches gravel surface placed on the road 12 feet wide.

Q. And what is the condition of that road insofar as the amount of heavy trucks with heavy loads is concerned, what number of tons or pounds can safely be carried over that road in its present condition?

A. You mean without disturbing the surface?

Q. No; I am not speaking of what the road will hold up, so you can haul them without bogging or breaking down, and that the bridges will stand?

A. Well, those bridges will take a 15 ton load.

Q. Will the road take it?

A. Yes, the road will take it, if they have anything like the right kind of tire width.

Q. Before this road was built under the conditions you found it when you commenced work what size of load could have been taken over that road safely?

A. Understand there was no road from Index to Paup Spur.

Q. I am not speaking of what was there?

A. It depends on the season of the year. There were seasons of the year you could not haul an empty wagon over it. An ordinary farm wagon with 2,500 pounds would have been a pretty good load.

Q. Now the road in its present condition, what is the effect *of* [a] twelve hour rain would have as to hauling on the day following?

A. It does not affect it any.

Q. Under the condition of the road before the hard surface was put on, what would have been the effect on heavy wagons or trucks for hauling purpose after a twelve hour rain?

A. I couldn't have hauled it. You might have hauled three or four hours and then you would quit.

Q. It would have been impossible to have hauled at all?

A. Yes.

Q. As to the road from the junction going toward Car Bend and Index, you say there was no road of any kind?

A. No, sir.

Q. What was the distance of the territory between Index back to where there was no road of any kind?

A. 6½ miles.

[fol. 143] Q. By referring to your map, what is the distance from the bridge at Index to Whatley, the station on the Kansas City Southern?

A. 5 miles.

The Court: Where is Whatley?

A. It is on the Kansas City Southern just at the edge of the hills between here and Index.

Q. That is a spur track used only in loading and unloading freight?

A. Yes, sir.

Q. Since you have been in Texarkana representing the roads and levee districts, have you had at various times had conferences with the manager of the company about crossings that they were to make over the levee, that they were to make with their pipe?

A. I have had crossing over the levee and the road, they just went ahead and cut through without saying anything to anyone. They did not bore under it, they dug through it.

Q. You heard the testimony yesterday about the method of boring through. Don't state what the method might be, but what was actually done when this pipe crossed the lines of road in the Miller County Highway?

A. They just dug a trench across and went on.

Q. That was done in the same method as it was done in the lands on each side of the road?

A. Yes, sir.

Q. Who was the general manager in full charge of the work and of the pipes of this pipe line Company in Miller County, or do you know? Who is now?

A. I don't know.

Mr. Arnold: We object to the question. Mr. Christain was undertaking to say that somebody was general manager and in full charge of the business of this company. He don't show any knowledge of how he thought somebody was in control.

The Court: That is a conclusion. Mr. Christain may state what he knows.

Mr. Moore: He has said he don't know who it is now.

Q. Who was the general manager of the company in charge of the business in Miller County during the year 1921, if you know?

A. Mr. J. B. Hillford was their superintendent, I think they called him.

Q. Did you have any conference with him in reference to matters of interest to the pipe line Company?

A. Yes, sir.

Q. What were those conferences in reference to?

[fol. 144] A. Mr. Hillford and I were very good friends, we talked about different things in connection with it, usually on a business matter, it was the question of the levee crossing.

Q. Then he did see you about getting permission to make various levee crossings for the company?

A. Yes, sir.

Q. Where was his office at the time?

A. It was in the State National Bank Building, I have forgotten the floor it was on. I believe it was on the second floor.

Q. Where did he live at that time?

A. Well, he at one time lived out on Beech street, but he later moved to Mandeville.

Q. That is where the pumping plant of the company is?

A. Yes, sir.

Q. On this map what school district is that part of the pipe line in that is in Miller Levee District in the bottoms?

A. I don't remember Mr. Moore, just what that number is.

Cross-examination.

By Mr. Arnold:

Q. Mr. Christian, you have been living in Miller County since about 1908?

A. Since 1911.

Q. And during that time you have been engineer for various projects, that is, the levee districts, and the road districts and several levee districts, have you not?

A. I have.

Q. Were you here when the original pipe line was laid in 1909?

A. I was not.

Q. You became familiar with the fact however, that there was a line in existence a pipe line across the river running through Miller County at the time you came here?

A. Yes immediately thereafter.

Q. And that subsequently there was another line laid parallel with that about 1915?

A. Well it parallelled it part of the way.

Q. Do you know where they unloaded the pipe and the material from the railroad for the building of the line about 1915, that is the Prairie Pipe Line Company?

A. I couldn't say.

Q. Do you know whether or not they had that material shipped in on the railroad, whether it came by rails to this vicinity, or how it got here?

A. I don't remember anything in connection with any line they laid in 1915.

[fol. 145] Q. Was there a road from Texarkana to Richmond and Ashdown?

A. There was only what is known as the Richmond road, but runs out through Texas.

Q. Well, there is nothing against it on that account?

A. But by the time it gets to the bottom it is about 8 miles or 6 miles west of the state line.

Q. Then in traveling from Texarkana to Ashdown people just had to light out and go through the woods before this road business was put through by you gentlemen? Is that the way you state it?

A. They could go by train.

Q. Is there any other way?

A. They could go by woods or go by train.

The Court: Was there no state line road at that time?

A. No, sir.

Q. When was that constructed?

A. The State Line Road was built in 1917 when the Miller County Highway and Bridge District was formed. Prior to that time Bowie County about 1914 or 1915 took the old Kansas City Southern dump that had been abandoned through the bottoms and built bridges at various openings and used that out to Index. That was the first road that went to Index.

Q. When was that abandoned by the Kansas City Southern?

A. It was prior to the time that I came here.

Q. Was there a ferry across Red river between Miller and Little River County?

A. There was a ferry at Index when the bridge was built out there, but there were times when there wasn't any place to get across the river at all there.

[fol. 146] Q. You knew of no way to get from here ordinarily from Texarkana over to Richmond in that part of the country?

A. Yes, you could go by train, or you could by Richmond and they had a ferry over there on the river, and there was a ferry occasionally in operation at Index.

Q. It makes no difference whether there was a ferry at Index or anywhere else. I want to know if there was a ferry kept up whereby people could travel from here to Little River County?

A. There were any number of ferries, Mr. Arnold, on the river.

Q. Then there was a ferry or more down there?

A. Yes.

Q. Now then, didn't people go from Texarkana to Fulton and from Fulton to Texarkana?

A. There was the old Fulton road that they could travel and a ferry was at Fulton, or they could go by train.

Q. There is a ferry still at Fulton, isn't there?

A. Yes, sir.

Q. Was that a public road from Texarkana to Fulton?

A. Yes. It wasn't located, however, where the present road is located.

Q. Well, the present road is located on the north side of the Iron Mountain Railroad?

A. Yes, sir.

Q. Where was the other?

A. It was on the north side of the railroad also, but it often was as much as a mile and a half away from the railroad.

Q. Well, there was a public road, wasn't there, from Texarkana to Fulton?

A. Yes.

Q. Now then, was there any other public road in this district?

A. Yes, Dooley Ferry road was a public road.

Q. Where did that road go to?

A. It went to what was known as Dooley Ferry from Texarkana.

Q. Did that go by Genoa?

A. No, it went out east 9th street and about a mile outside the city limits turned to the northeast and went out Dooley Ferry.

Q. Where is Dooley Ferry with reference to Fulton?
A. It is about 10 miles on an air line down the river.
Q. That road did not go to Genoa?
A. No.
Q. Well, was there any other public road in this district?
A. Yes, Genoa road.
[fol. 147] Q. How much mileage was there in that Genoa road within the district?
A. About 4½ miles, as I remember it.
Q. That runs south of Texarkana.
A. Southeast, almost due east.
Q. Was there any other public road in the district?
A. Oh, I presume there are numbers of roads that have been declared public roads at that time.
Q. It was not a jungle, entirely?
A. No.
Q. There were roads for people to travel around on before Miller County highway was constructed?
A. Yes, most of them were in the hills, however.
Q. Well, in what possible way was it that they could have hauled pipe in 1915 to have got out to a place where they laid the pipe line of this company?
A. They could probably have cut out a road of their own and hauled it.
Q. Was there no road that led in the vicinity of where the pipe line was laid from Red River to Mandeville?
A. Paup Spur road ran out about a mile and a half. They could have gone out the river and then by cutting through some of the farms could have gotten by to their line.
Q. Was there any cultivation in Red River bottoms between the hills and Texarkana, north and east in farms?
A. Yes.
Q. Well, there were some roads, weren't there?
A. Just farm roads only.
Q. There were public roads, so-called?
A. No, sir, no public road down that river at all.
Q. No public roads leading from Texarkana north or east?
A. There were roads northeast through the district, yes, the Fulton road.
Q. Well, was there any other?
A. The Paup Spur road was a public road, but it only ran out a short distance.

Q. How far?

A. Well, it ran out to the river at what is known as the Car Bend place, about a mile and a half in length, I think, out to the Car Bend place.

Q. Were there farms along in the bottom south and west of the river in this district before it was farmed in the territory?

A. You mean south of the river?

Q. South and west of the river. Were there any farms in there?

A. Yes, there were farms along the river.

Q. And were there not hill farms between Texarkana and the river bottom?

A. Yes.

[fol. 148] Q. Well, the people had some way of getting around in this district, didn't they, before these roads were formed?

A. Yes.

Q. By what means did they get around?

A. I stated awhile ago there were any number of public roads in the hills.

Q. In this district?

A. Yes.

Q. But you know of no public roads in the bottoms?

A. They were not there.

Q. There were roads of some kind that these people used?

A. Yes.

Q. How did they get to their farms?

A. A lot of them just took through the woods.

Q. Now, Mr. Christian, with reference to these roads, you have called them hard surface roads, I believe, of what material are they composed?

A. Gravel.

Q. Just gravel?

A. Clay bearing gravel.

Q. What was the thickness of this gravel put on these roads?

A. Eight inches.

Q. Isn't it a fact that these roads have been in pretty bad fix and not very good for travel since they were laid there, most of the time?

A. No, that is not true.

Q. What about the roads, have they been perfectly good roads all the time?

A. They have had some terrific traffic on them and there has been some wear.

Q. The Prairie Pipe Line Company tore them up?

A. I did not make that statement.

Q. Well, they have had traffic on them?

A. Yes.

Q. Isn't it a fact that these roads have been almost constantly out of repair from here to Paup Spur and to Index?

A. They have at all times been passable. They have needed some repair.

Q. Haven't they been notoriously out of repair most of the time?

A. No.

Q. Now these roads, will you state to the Court whether or not any of these roads were laid over places where old roads existed before, public roads or good roads, or what not?

A. Yes, some were laid where old roads had existed before.

Q. Just state where, which of these?

A. Well, from Texarkana to Mandeville, they followed practically the old road location out there.

Q. Well, from Mandeville to Paup Spur?

[fol. 149] A. There were changes made in the location.

Q. The general direction was the same, wasn't it?

A. Yes.

Q. Anywhere else?

A. Well, on east 9th street, some of that is over old location.

Q. That is in the city, isn't it?

A. East 9th street road.

Mr. Moore: I haven't the lease objection from the standpoint of this case, for this matter to continue the rest of the day, but that I can't see the idea of it unless it is to test the knowledge of this witness as to the map that has been introduced and whether it is a true map. I just suggest that if that character of questioning is continued very long it will delay us. It has not any bearing.

The Court: I do not know what the object is.

Mr. Moore: The fact that the road district was a failure, I do not see what effect it could have if it was a legal assessment, it is legal.

Mr. Arnold: I think I will concede the proposition. The point I was attempting to direct my questions to was there were roads before this was laid, and these roads were not of much importance on the whole. That was my understanding. Of course, I may be mistaken. That was my understanding. I haven't been able to get this witness to let it out.

The Court: I guess you will have to give it up as a bad job.

Q. Do you recall any other roads of these improved roads than those that you have mentioned, which followed the line of an old public road?

A. Well, the Genoa road, the Line Valley road and practically all of the roads follow a little bit of some old road.

Q. At places though, you had to vary from the old line and cut through?

A. At some places we varied the location, and in others it was an entirely new road.

Q. Now, Mr. Christian, you may state whether or not these roads were laid out and built with reference to betterment and advantage to give to the Prairie Pipe Line Company?

A. They were given no special consideration.

Q. Do you find that the Prairie Pipe Line Company, or the Standard Pipe Line Company, as it now is, is paralleled by any of these roads that were built by the district?

[fol. 150] A. No, I don't think so.

Q. The roads cross the pipe line right-of-way in one or more places?

A. Four, I believe.

Q. At those crossings, have you had anything to do with the method of construction and the putting the pipe line under the road at all?

A. No, sir.

Q. Now, I believe you say that at no point, if I understood you right, within the district where the pipe line existed at any point has or has not access to one of these public roads within a mile and a half?

A. Between a mile and a half and two miles.

Q. At a point between the roads and the pipe line, is that woods?

A. Not altogether.

Q. Any road there leading from these public roads, any public roads leading from your roads to the pipe line covering this intermediate space of a mile and a half that you have mentioned?

A. There probably are. I do not suppose any one knows all the roads that have been declared public roads in Miller County.

Q. There may be roads at some place where you can reach the pipe line from the old road and there may be some roads intermediate between those places?

A. Yes, there are roads, I have been over them myself, but whether they are public roads or not, I can't state.

Q. There is no right-of-way or roads cut out by the district from your public roads to the pipe line in order to accommodate the pipe line, is there?

A. No, sir.

Q. Now, Mr. Christian, you were asked in the latter part of your examination in chief with reference to school districts, the school districts one or more, located in Miller Levee District No. 2, I will ask you to state what school districts this pipe line runs through inside of Miller County Highway and Bridge District?

A. I am not familiar with the boundary lines of the school districts, Mr. Arnold, unless I had a map I would be unable to tell you.

Q. Would this assessment be of any aid to you to determine that property?

A. Probably would not.

The Court: Mr. Arnold, I would like to ask you what significance that assessment has that calls Mr. Christian's attention to?

Mr. Arnold: There is one feature of it, it is all valued as personal property. That is one feature of it and there was some testimony introduced here with reference to the use of [fol. 151] the roads by the company and also the bridge, as a matter of information. I don't know that it would cut any special figure that this company had been assessed for gen-

eral taxation in the county $572,000 and were paying that tax, we were good tax-payers and were not trying to beat taxes generally.

The Court: What I was trying to get at was whether it served any purpose so far as the assessors were concerned. The act did not require that that be taken into consideration.

Mr. Arnold: The act did not require it but the assessors did follow it. They simply assessed the benefits against this company for the full amount that they had been assessed for taxes.

L. F. French, a witness sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Moore:

Q. What is your name?
A. L. F. French.
Q. Where do you live?
A. Texarkana, Texas.
Q. What is your business?
A. Teaming contractor.
Q. You do work, levee work, and also hauling do you?
A. Yes, sir.
Q. Have wagons and teams that you have used for that purpose?
A. Yes, sir.
Q. How many years have you been in that character of business?
A. Over 20 years, I think.
Q. You formerly lived near — Hill of Lafayette County?
A. Yes, sir.
Q. And then moved to Louisiana?
A. Yes, sir.
Q. Were you in that business in Louisiana?
A. Yes, sir.
Q. How many years have you been in Texarkana?
A. Something over 4½ years.

Q. Were you employed to do hauling for the Prairie Pipe Line Company, doing hauling in the years 1923 and 1924?

A. I was employed by the Standard Pipe Line Company.

Q. It was after the purchase from the Prairie Pipe Line Company by the Standard?

A. Yes, sir.

Q. For what length of time did you work as contractor?

A. Really, I didn't contract that piece of work, I had my teams on by the day.

Q. For what length of time did you work?

[fol. 152] A. I think I commenced the 15th of September and finished about the first of January. I went through from Mandeville to De Queen.

Q. What character of work were you doing?

A. Hauling pipe.

Q. For what length of time about were you hauling in the territory between Mandeville and the river crossing that is in Miller County?

A. I really don't know just when we did cross the river, but it seems to me about 45 days, or 60 days; between a month and a half and two months.

Q. Were you using trucks or mules and wagons?

A. Using mules and wagons.

Q. Where was that pipe unloaded from the railroad?

A. We had some at Mandeville and some at Paup Spur, most of it at Paup Spur.

Q. After the pipe was unloaded at Paup Spur by what means was it hauled out along the roads in this district?

A. I think my teams, in fact I know they did, hauled some of this pipe from Mandeville straight through the line as far as it goes where they wanted to tie the line in from Paup Spur. They hauled some of the pipe from Paup Spur and some from the good road. I don't know how much they hauled from the railroad and how much from the storage pile.

Q. Who hauled that out on the road to what you call the storage pile?

A. The company hauled that themselves with trucks, what was hauled with teams.

Q. Now the teams hauled part of this from the railroad?

A. Yes, sir.

Q. Where the teams hauled it, did you go along the line of the pipe, or did you follow the good roads as far as you could go on the good roads?

A. From Paup Spur I hauled on the good road to where I went off the good road to the pipe line.

Q. For what distance did the company haul from Paup Spur up to the distributing point?

A. I don't think it was more than 3½ miles or 4 to where the line crossed the good road.

Q. Were these pipe unloaded by the side of the good road?

A. Yes, sir.

Q. And then how were they hauled from there until they were distributed?

A. They were hauled with teams up the pipe line and down the pipe line.

[fol. 153] Q. What character of load could you haul with your mules as long as you were on the good road?

A. On that gravel road, or any hard surface ground it is a matter of loading your wagon and not your teams. But in this instance I didn't stay out there and could not tell these wagons that hauled from Paup Spur could carry a load that they had to go to the woods with, and they practically hauled the same load. Of course, on hard road they would haul more.

Q. Then you did not load your wagons to capacity because you were going to leave the hard road and distribute it?

A. Yes, sir.

Q. Could you have hauled more pipe if you were going to stay on the hard surface road?

A. Yes, sir.

Q. What would be the difference?

A. A good deal depends on the class of country you are going through.

Q. I am speaking of what you would haul on the hard road.

A. It is just a matter of what your wagon would hold up.

Q. Just as long as you would not break the wagon down you could haul that?

A. Yes, sir.

Q. After leaving the hard surface road how did you have to load your wagons?

A. I think I pulled from 6 to 8 joints.

Q. Then you could not haul to capacity after you left the road?

A. No, sir.

Q. How did the company do, if you know, in hauling out to this distributing point, did they haul most of that with trucks?

A. I think they hauled it by teams, hauled quite a lot of it from Paup Spur.

Q. Did they distribute any of this pipe along the line after leaving the good road with trucks?

A. I really don't know, Mr. Moore, I don't think so.

Q. Could a truck after leaving the good road go along the pipe line during that time of the year?

A. I don't think so.

Q. From your knowledge gained as a teaming contractor, is it an advantage when you are hauling heavy material such as this pipe, to have hard surface roads rather than dirt roads to haul over?

A. Yes, sir.

Q. If you are taking a contract to haul material would you take into consideration the question of whether it was to be over a hard surface or a dirt road?

A. Yes, sir.

[fol. 154] Q. Then could you afford to haul cheaper over a hard surface road than you could over an ordinary dirt road?

A. Yes, sir.

Cross-examination.

By Mr. Arnold:

Q. Mr. French, from what point did you get the pipe that you hauled?

A. I hauled from Mandeville, some pipe from Mandeville, and some from Paup Spur, and some from where it was unloaded on the highway.

Q. During what time was this hauling done by you?

A. It was in the fall of 1923. I think I commenced about the 15th of September.

Q. And for what length of time?

A. I hauled up until about the first of the year.

Q. First of the year 1924?

A. Yes, sir.

Q. How many teams were you using?

A. I think I had 5 teams on this haul from Mandeville to the river. From Ogden to De Queen I had 6 or 7.

Q. You had the contract?

A. No, sir, my teams were under Mr. Lee's supervision. They were hired by the day.

Q. Who was Mr. Lee?

A. He was the superintendent in charge of construction.

Q. What was the company doing, the Standard Pipe Line Company?

A. They were laying pipe lines, as well as I knew, from Mandeville into De Queen.

Q. One line or two?

A. Two, I think. I am not sure about that. I did not go up and down the line.

Q. You just leased your teams?

A. Yes, sir.

The Court: Did they haul pipe from Mandeville or Paup Spur to De Queen?

A. No, sir, my teams hauled from Mandeville and Paup Spur to the river, and from Ogden back to the river, and from Ogden the other way. And then they had different distributing points on the Kansas City Southern.

Q. This Paup Spur and Mandeville is on the Iron Mountain road, I believe?

A. Yes, sir.

Q. But the railroad running from Texarkana north is the Kansas City Southern?

A. Yes, sir.

Q. They have unloading places at Whatley and Ogden on the Kansas City Southern?

[fol. 155] A. I did not haul any from the Kansas City Southern until I crossed the river.

Q. At what point did you receive the pipe there?

A. Ogden.

Q. How far is that from this bridge?

A. I really don't know. It seems to me like it is about 3 miles. I am not sure.

Q. They have no good road there?

A. No.

Q. From the bridge to Ogden?

A. No.

Q. Now this pile that you hauled in this district, your teams received it at Mandeville and at Paup Spur?

A. Yes, sir.

Q. Was it the two lines of pipe that your team hauled that was laid in this district?

A. Yes, sir.

Q. They had some other teams on?

A. I had teams but there were other teams.

Q. There was no other road that could have been used for hauling this pipe except the so-called hard road?

A. No, sir.

Q. They had to use that to get there at all?

A. Yes, sir.

Q. But now when they got to the right-of-way of the pipe line, didn't they unload some of this pipe?

A. Some of this pipe was unloaded.

Q. Did that have a tendency to lessen the advantage?

A. It shortened the team haul, it made a shorter team haul going up and down the line.

Q. Now if there had been a good road from Mandeville and Paup Spur the wagons would have been loaded, borne the same load all the way through to the point of depositing on the right-of-way?

A. I think so, Mr. Arnold. Now my teams were loaded at Paup Spur to carry a load that they could get through the woods with. I didn't unload any pipe. I loaded for the work for the road, and that is what I left Paup Spur with.

Q. You then had the same load you would have taken if this had been an improved road?

A. Yes, sir.

Q. When you left the good road you did not discharge a part of your load?

A. No, sir.

Q. And so did not take any advantage of your good road?

A. No, sir.

Q. And that applies to all the pipe that was laid in this district on these two lines in 1923?

A. Yes, sir.

Q. Now to have gotten the benefit of the good road in this transportation or the haul, it would have been neces- [fol. 156] sary for that good road to reach to the point where you finally discharged your load?

A. Yes, sir, if the good road would have been parallel the pipe line, of course, I could have hauled more pipe because I would not have gone under the instructions of Mr. Lee. The teams were loaded just the same to go over the road, over the good road because there was no unloading it, it was carried through and deposited on the pipe line.

Q. Why didn't, if you know, Mr. Lee take advantage of the good road and haul as much as he could as far as the road went?

A. I don't know, sir. They trucked out some pipe on the good road.

Q. Did you understand it was because the expense of re-handling would take the advantage away?

A. I don't know, sir.

Q. Why did you, nothwithstanding that there was this hard road, just take what you could haul through the country?

A. Because we did not have a great way to go over the road.

Q. Well, it was in order to avoid re-loading them?

A. Yes, sir.

Q. I will ask you to state whether or not that there is any advantage in favor of the pipe line in having its men live in town and be varried to the place of work, or having them come out there and remain in a camp, which way is most advantageous.

A. I couldn't say in regard to the pipe line. I maintained a camp myself. I can't say as to the pipe line. I find it an advantage to have a camp because my men is all scattered. Of course I could get them out there quicker on a gravel road than to go through woods, but I maintain a camp because I have got them when I want them.

Q. Which is the least expensive?

A. I find them more expensive where I have got them scattered. I never can tell when I am going to have them and when I am not until they get there,

Redirect examination.

By Mr. Moore:

Q. Mr. French, don't you find that in running a camp, the camp always loses money?

A. Sometimes I lose money in a boarding camp but I always figure in making up the difference by having the men on hand.

[fol. 157] Q. [You-] work usually has been at places where you did not have good roads [them] to haul them out over?

A. Yes, sir, my work is practically all off the goods roads.

Q. Then it has been an absolute necessity to do the work at all, that you should have a camp?

A. Yes, sir, I always have a camp.

Q. Where you are convenient to a town it is much easier to go and haul labor than it is where you have a camp.

A. Well, I can haul labor a little easier, in town where they live in different places in town, but I run a camp even in town because I figure that I have always got them at my call in the morning, and if they are living out in town the chances are they will come up short and will have to leave teams in when I would not if I have got them right in my camp.

Q. You spoke about putting on loads for the bad part of the road instead of the gravelled part of the road?

A. Yes, sir.

Q. That was because you were going off the road?

A. Yes, sir.

Q. When these pipe were hauled out to the distributing point by trucks, did they not load to full capacity knowing they were going to stay on the gravel road?

A. I really don't know; I suppose they did.

Q. They did not get off the gravel road at all?

A. No, sir.

Q. Wasn't part of that right-of-way at times so bad that even with your teams you had to throw the pipe off and unload it and snake the pipe to the location?

A. I snaked the pipe a little bit through the bad places.

Q. Then it was impossible even with the light loads you hauled out to go along the right-of-way?

A. Yes, sir, it would have been impossible. Practically on any pipe line there is places you will have to unload and snake your load down the right-of-way one at a time.

Q. Then in hauling, if you come to one bad place, killed all the good road beyond that bad place, did it not?

A. Yes, sir.

Witness excused.

W. J. PAUP, a witness sworn on behalf of the defendant testified as follows:

[fol. 158] Direct examination.

By Mr. Moore:

Q. Your name is W. J. Paup?

A. Yes, sir.

Q. And you live in Texarkana?

A. Yes, sir.

Q. You have been employed to look after the accounting for the Miller County Highway and Bridge District for several years, have you?

A. Yes, sir.

Q. Have you become familiar with the assessments to a large extent through that work?

A. I have.

Q. State, if you can, what was the assessed value for County and State purposes during the year 1920 of the cleared land in that part of the Miller County Highway and Bridge District that is within the Miller Levee District No. 2?

A. Ten dollars per acre is my recollection of cleared land in cultivation.

Q. And what is the assessment of wild land?

A. It was on an average of $4.50 per acre.

Q. And what after getting away from the immediate territory of Texarkana, was the average assessment of the hill lands in that Miller County Highway and Bridge District?

Mr. Arnold: That is for the purpose of general taxation?

Mr. Moore: General taxation.

A. That runs on a average of $5 and $6 an acre.

Q. Now, from the information shown in this assessment roll that you hold there, what is the total assessment benefits against all the property within the Miller County Highway and Bridge District, the town property, the lots, public service corporations, all property?

A. You don't mean the County assessed valuation?

Q. No; the assessment of benefits for road purposes.

A. That was $6,687,178.00.

Q. What is the total assessment of benefits in the city of Texarkana and the town of Mandeville?

A. That would be $2,561,100.00.

Q. What is the total assessment of the lands for those purposes, that is, property outside of the city of Texarkana and the town of Mandeville?

A. $3,664,445.00.

Q. What is the total acreage of land in the district?

A. That is approximately 136,322 acres.

Q. What does that make the average assessment of benefits per acre on the rural property, the land outside the city?

A. $26.88 per acre.

Q. Give the number of mills on the dollar that has been assessed on the benefits in the district for the years commencing with the year 1916 and including the year 1924?

[fol. 159] A. The year 1916 they levied 6-2/3 mills for the benefits, 1917 was the same; 1918 was 7 mills; 1919, 7 mills. The years 1920, 1921, 1922 and 1923 we levied 10 mills, and for the year 1924, 8.5 mills.

Q. In arriving at the amount of taxes that any piece of property would pay, then the assessed benefits against that property was taken and multiplied by the number of mills for that particular year, and the result was the amount of taxes for that year. Is that correct?

A. That is correct.

Cross-examination.

By Mr. Arnold:

Q. The assessed benefits against property in the district, all property, city and country, ran something over $6,000,000?

A. Yes, sir.

Q. On account of the improvement from these roads?

A. Yes, sir.

Q. Now this percentage of levee to collect money to pay the interest and bonds is based on the benefits then?

A. On the benefits.

Q. And if a tract of land, if their benefits against a tract of land is assessed at so much, then these mills that you mentioned is collected on the basis of that alleged benefit?

A. Yes, sir. The benefits on a certain piece of property is placed at $1,000, they collected during those last four years 1 per cent of the benefits or $10.

Q. So the collection was on the benefits?

A. Yes, sir.

Q. And not on the assessment for general taxation?

A. No it was on the benefits.

Q. A certain percentage of those benefits were collected every year?

A. Yes, sir.

Q. The assessments for general taxation has no bearing then, directly?

A. Not in figuring the tax levy for each year.

Q. The lands lying in Miller Levee District No. 2 referred to by Mr. Moore a moment ago, which are assessed for general taxation, cleared $10 and the wild $4.50, that is bottom land?

A. Yes, sir.

Q. And generally considered very rich land?

A. Yes, sir.

Q. You were not one of the assessors yourself?

A. No, sir.

Q. You have not testified, I believe, with reference to the assessments against the pipe line or the telephone, telegraph or any of that?

A. No, I have not.

[fol. 160] Mr. Moore: That is already in evidence.

Mr. Arnold: I am not insisting on your taking more time, Mr. Moore.

E. H. PEYTON, a witness sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Moore:

Q. What is your name and residence?
A. E. H. Peyton, 612 Locust Street, Texarkana.
Q. What is your business?
A. I operate a farm.
Q. Where?
A. Paup Spur.
Q. Is that Paup Spur where the station on the Iron Mountain Railroad is and where the road forks from the Fulton road to go to Index?
A. Yes, sir.
Q. How many years have you been operating that farm at Paup Spur?
A. Since 1917.
Q. And do you stay down on that farm most of the time?
A. I lived there until last September.
Q. Had those good roads been completed when you moved there?
A. No, sir.
Q. What was the condition of the road between Texarkana and Paup Spur before these good roads were built?
A. There was just a good road from here to Mandeville and they were passable, but after you got into the bottoms during the rainy season, they were bad.
Q. Was it possible for an automobile to use those roads during the rainy season?
A. No, sir.
Q. In coming to town, how many head of stock would be used to pull a wagon through?
A. We always sent a four mule team, to haul out an ordinary load to Texarkana before the roads were completed.

The Court: A four mule team to haul a two mule load?
A. Yes, sir.

Q. Was there any roads part of the way from Paup Spur to Index?

A. There was a road that led out to about a mile and a half in the direction of the Car Bend.

Q. But the point where the Paup Spur road leaves the Car Bend road to Index, was there any road of any kind?

[fol. 161] A. No, sir, no road at all. You might meander around through the woods, but there was very little travelling through there.

Q. You state you were living at Paup Spur during the year 1921?

A. Yes, sir.

Q. Did the Prairie Pipe Line Company unload any pipe at that place during 1921?

A. Yes, sir.

Q. About how many cars, if you know?

A. I heard a witness say yesterday 21 cars, I don't know.

Q. You kept no record?

A. No, sir.

Q. You knew there was a large quantity unloaded?

A. Yes, sir.

Q. What was done with that pipe?

A. It was hauled out and distributed along the line.

Q. What means were used in hauling it from Paup Spur along the country road?

A. They used trucks, the greater part of it was hauled in trucks.

Q. Would those trucks leave the gravel road?

A. I don't think so.

Q. Did you have any teams on that haul during the year 1921?

A. Yes, sir.

Q. Did your teams haul from Paup Spur or from the distributing points along the gravel road?

A. We hauled some from Paup Spur, we usually took a load out in the morning and hauled as far as the good road and then we kept the team out there the rest of the day hauling from the good roads out along the line.

Q. In order to utilize all the time you would go out with one load and then haul the rest of the day from the distributing point?

A. Yes, sir.

Q. What was the character of the road over which you hauled after leaving the good road?

A. We just unloaded as soon as we got to the right-of-way of the pipe line. There was no road. It was a right-of-way made through the woods and we would follow that.

Q. What kind of loads could you haul on that pipe line right-of-way as compared with the loads that could have been hauled on the good road?

A. At that time it was very bad, wet, and two or three pipes, three pipes was as much as we could ever haul at one load.

Q. On the good road how could you have hauled compared with the capacity of the wagon?

[fol. 162] A. You could haul all you could get on the wagon. It wasn't a question of what we could pull, it was a question of what our wagons would hold.

Q. In hauling with trucks, was it also a question of what the truck would hold up, could they haul whatever load of that could be put on?

A. I have seen them go out of there with anywhere from 15 to 20 lengths of pipe on a truck.

Q. Did those trucks ever attempt to leave the good roads?

A. I don't think so.

Q. Were there places on this pipe line where you distributed pipe that would get wet and impassable for teams?

A. Yes, sir; quite often we had to unload our wagons and snake them, where we couldn't get along with the wagons, unload them and hitch a pair of mules to one length of pipe and pull it in place.

Q. In your opinion, was any advantage to the pipe line company for people to use that hard surface road in hauling their pipe out?

A. I should think so.

Q. On your farm can you raise any more crops of any kind because that good road is there?

A. No, I don't think I can.

Q. What is the advantage to your land of having a good road adjoining it?

A. Well, we have ice delivered in our box there every day, we come to town in 15 and 20 minutes and we have a rural carrier that delivers the mail right at our door.

Q. Then you think they are benefited just the same as the land raise any more crops?

A. Yes, sir.

Q. In your opinion, has benefit resulted to the pipe line from the building of this road?

A. They can haul the material over the road, they carry the men to and from the work, they are not very far from the pipe line at any time.

Q. Then you think they are benefited just the same as yourself for accessibility and ability to transport stuff?

A. Yes, sir.

Q. You have stated that they hauled their men over the road during the year 1921, how were the workmen who put this pipe in, how did the workmen get on to the job?

A. They were hauled on trucks from Texarkana and some of them provided their own automobiles.

Q. Were any of those men hauled from Mandeville as well as Texarkana?

A. Yes, sir, I think perhaps they kept their crew at Mandeville, a number of white men. They would work white [fol. 163] men. There was a number of white men around Mandeville that lived there that worked on this pipe line and they carried them and continued to carry them until they completed the line on up to De Queen.

Q. The way the road runs it bends by your house?

A. Yes, sir.

Q. And you could see the men going and coming?

A. Yes, sir.

Q. About how many men were being worked during the year 1921 on this pipe line?

A. At one time I would judge they had something like 150.

Q. For what length of time about, did the work continue?

A. For several months.

Q. When was the next work done after 1921 on the pipe line?

A. It commenced sometime in 1923, I think.

Q. And for what length of time did that continue?

A. Well, they completed it sometime like the first of 1924.

Q. Was any pipe unloaded at Paup Spur during 1923 and 1924?

A. Yes, sir.

Q. What quantity if you know? Or about what quantity?

A. Several cars.

Q. Did you work for the company during the period of 1923 and 1924 that you have mentioned?

A. I don't think we did. I don't think I had any teams on at that time.

Q. How were these pipes taken out during the years 1923 and 1924?

A. Most of the work was done with trucks. They hauled some with wagons and teams.

Q. What was the capacity of a truck in hauling at that time compared to what a truck would haul before.

A. They used these large trucks. I don't know whether they loaded them to the capacity or not, but they would haul from 15 to 20 lengths of pipe to the load.

Q. Do you know whether these trucks left the good road with those loads?

A. I think not.

Q. About how many men were worked during this period of 1923 and 1924 that you mentioned?

A. I don't think that they had quite as big a crew as the first line that they put down. They perhaps worked 75 or 100.

Q. And that continued for how many months?

A. Three or four months.

Q. How would those men be taken out on the work?

A. With the trucks.

[fol. 164] Q. Would you see the trucks pass your place?

A. Yes, sir.

Q. How many men would go out on the trucks?

A. I judge they would have anywhere from 25 to 30 men on a truck.

Q. Did you have occasion to pass by Mandeville at any time when repairs were being done on the station there?

A. Yes, sir.

Q. Did you ever notice any cars in any quantity that people would go out to work in?

A. Yes, sir.

Q. How many would you suppose you have seen?

A. They would be strung along the side of the good road for a long ways, most of them heading that direction, near the ditch as they could get and they would stand there all day.

Q. Did you notice whether there were a large number pulled up inside, inside the enclosure as well as those outside?

A. Yes, sir.

Q. How close does the road go to the fence and the buildings of the company?

A. Just the width of the right-of-way of the railroad to their holdings. The fence sets back possibly 200 feet from the railroad right-of-way.

Q. What were those men doing, if you noticed, that came out to Mandeville in those cars?

A. Well, they were distributed along where they were laying this pipe, digging ditches, cutting right-of-way. They would bring these men out and distribute them and then they had a crew at the Spur that stayed and loaded these trucks as they would come in, and then they had a crew unload them, that kept the trucks going all the time.

Q. What work, if any, was going on at the station at Mandeville?

A. I don't know what kind of labor they were doing there. I don't know. I saw them there. I suppose they were working, but I don't know the nature of the work they did.

Q. At the time this new pipe was being unloaded and hauled out from Paup Spur, was there any old pipe that had been taken up that had to be loaded and sent out?

A. Yes, sir.

Q. Do you know where that old pipe came from?

A. It was taken up from up there on the river, I think some of it was taken up where they changed the location of the line, and possibly some at other places that was bad pipe.

Q. How was that hauled into Paup Spur?

[fol. 165] A. By trucks.

Q. Was that brought in over these good roads?

A. Yes, sir. They hauled it with teams out to the good road and had it in large stacks and then they came there with trucks and brought it in.

Q. What year was that?

A. 1921 and 1922.

Q. It was during this year of 1923 or 1924 when this other work was done?

A. No.

Q. How many of these distributing points were there between Paup Spur and Index where the pipe was unloaded to be hauled out by teams?

A. They had one point right where the pipe line crosses the good road at or near Dr. Collins' farm, and then it goes on to Dr. Collins' farm and the next point was at or near the bridge across Red River.

Q. There were two distributing points?

A. Yes, sir.

Q. Trucks hauled it to these points and unloaded and then they had teams pick them up and distribute them?

A. Yes, sir.

L. C. ADAMS, a witness sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Moore:

Q. What is your name?

A. L. C. Adams.

Q. You live in Texarkana?

A. Yes, sir.

Q. Do you own a farm on Red River in the neighborhood of Homan?

A. Yes, sir.

Q. Do you spend a large part of your time on your farm?

Q. Yes, sir.

Q. For how many years have you been giving that your attention and living there a large part of the time?

A. About 40.

Q. What position do you hold with the Miller County Highway and Bridge District?

A. Vice-President.

Q. How long have you had that position?

A. Something like 10 months.

Q. You succeeded Dr. J. R. Dale?

A. Yes, sir.

Q. Are you well acquainted with the territory in Red River bottom between Homan and Index?

A. Yes, sir.

Q. You are in and have been in the cattle business for many years?

A. Yes, sir.

Q. Has that caused you to frequently go over that territory?

A. Yes, sir.

[fol. 166] Q. What character of roads did you have in Red River bottoms prior to the time the good roads were built from Texarkana extending through that district to Fulton and to Index?

A. Well, we had a public road, such as it was, running from here to Paup Spur, and then we had one from there going over in Little River County, one went down through Car Bend and we had a ferry there. We could run it.

Q. What proportion of the time would that ferry run?

A. Sometimes you could get across and sometimes you couldn't, if the river was up any at all you couldn't get across.

Q. What was the character of that road as to being a good or a bad road for hauling?

A. If it was dry in the summer time you could haul very well, but in the winter time I used from four to six mules for a two mule load.

Q. Your plantation was near Homan?

A. About three-quarters of a mile west.

Q. Prior to the building of this good road did you ever attempt to haul any of your cotton?

A. No, sir, we shipped all of our freight to Homan and all our cotton from Homan out.

Q. Why did you do that?

A. We couldn't get over the road.

Q. With the road in its present condition how many bales of cotton can you bring in with a four-up mule team?

A. 16 to 20.

Q. Was there any road after leaving Car Bend road between Index and Paup Spur?

A. No, sir, only the river road that run up the river front.

Q. That is, you went all the way over to where this ferry was and went up the river front?

A. Yes, sir, that is the only way we could get out of there.

Q. What is the character of the soil from the point where this road enters the bottoms between Mandeville and Paup Spur and Index?

A. Well, it is a black buck-shot land, water standing over it all of the time.

Q. Then without this road in connection, could heavy hauling have been done between Paup Spur and Index?

A. No, sir, couldn't have gotten over it at all only in every dry seasons and then we didn't have any road up through there. It was such a condition that you couldn't have a road through there.

[fol. 167] Q. Did you have occasion during the years 1923 and 1924 to frequently go from here to the farm and from your farm to Texarkana?

A. Yes, sir.

Q. Did you ever meet the workmen of the Prairie Pipe Line Company on their way to work?

A. Met them pretty often between 3 and 4 o'clock.

Q. How were those workmen taken out to work?

A. Hauled them in trucks, all that could get in them, and then any amount of cars.

Q. Within the last week since the fire, has there been any any large number of workmen going out to the plant?

A. Been running about two trucks loaded with men and any amount of cars.

Q. That is within the past week?

A. Yes, sir.

Q. You have met them yourself and seen them there?

A. Yes, sir.

Q. You have had considerable experience in hauling cotton and goods of various kinds?

A. Yes, sir.

Q. Before you looked after the farm yourself you did hauling and ran a livery business in Texarkana?

A. Yes, sir.

Q. From your knowledge thus gained, do you think that the building of this good road can be or has been any benefit to the pipe line company?

A. I consider it has been at least more than a half benefit to them.

The Court: What do you mean by that?

A. I mean by that, I will say three fourths, if they hauled 17 to 20 pipes off that road, they can't haul over three out on the right-of-way.

Q. You mean it has benefited them with reference to the traffic?

A. Yes, sir, I claim that is the only way they have been benefited, by the traffic.

Q. Does your farm receive any benefit from the road except the traffic you haul in or out?

A. Not a bit.

Q. You can't raise more crops or do any more work?

A. No, sir.

Q. You can't get any cotton choppers or pickers if you want them, because of it?

A. Yes, sir.

Q. Then explain what benefit, in your opinion, comes to the pipe line from having a good road crossing?

A. They can haul a good deal more pipe on the hard surface road. Now, for instance, they hauled from 15 to 17 [fol. 168] pipe up that road, they dumped it off and they could haul only 3 or 4 over the righ-of-way. In some places over the right-of-way they can't haul any, they have to snake it with mules.

Cross-examination.

By Mr. Arnold:

Q. Mr. Adams, you have been farming for a good many years?

A. Yes, sir.

Q. You own some of the rich land in the bottom?

A. Yes, sir.

Q. How many acres are there in your farm?

A. Between 5 and 6 thousand.

Q. Isn't the value of that farm increased by reason of the road?

A. Yes, sir.

Q. What was the value per acre of this land that you have before the road was built?

A. Well, the levee is the first thing that increases the value of the land. If you remember I bought a farm and had you looking after it. I think it figured about $18 an

acre, and about that time they were figuring on building the levee, and did just after. Now that land is worth, I guess, $100 an acre.

Q. Taking cultivated and uncultivated?

A. No, sir, the land outside the levee is not worth that much money. No, I don't figure that this in the woods is worth as much.

Q. The $100 applies to your cleared land?

A. Yes, sir.

Q. How much cleared land have you?

A. Something like 2,500 acres.

Q. And this that is in the woods, what price do you put on that?

A. $40 an acre for that that is inside the levee.

Q. Are there other farms in that vicinity?

A. Yes, sir.

Q. Other rich lands in that vicinity?

A. Yes, sir.

Q. As a matter of fact, the lands inside of Miller Levee District No. 2 which lies inside this road district, that is generally rich land?

A. All along the river front it is, the bottom land.

Q. What was the value of the cleared land did you say, prior to the making of these improvements, the levees and highways?

A. Well, there wasn't very many of us. I don't think there [—] but two of us. We just figured whenever we [fol. 169] could make a crop—had an overflow two or three times a year. I suppose anywhere from $5.00 to $12.50 an acre.

Q. What was the value of the unimproved land?

A. $2.00 to $5.00, I guess.

Q. And now you say the improved land is worth $100 an acre and the unimproved $40?

A. Yes, sir, I have got some outside of the levee that is worth $2 or $3; I would not have it at all if it wasn't holding together.

Q. That is not protected?

A. No, sir, it overflows every time the river gets up.

Redirect examination.

By Mr. Moore:

Q. You don't mean that the building of these roads alone have given the increase to the value of the land?

A. No, sir.

Q. Hasn't that increase come from a variety of circumstances, the building of the levee, digging of ditches, building of roads, increased price of cotton, the growth of the city of Texarkana that we are adjacent to, and so many elements that it would be hard to say which benefit came from any particular one?

A. I don't figure any certain thing, the addition is general conditions; I think the first advance that advanced the Red River land was the levee, and I think the next thing that advanced it was the ditches, and then the highway and being close to Texarkana is one.

Q. At the time you refer to this land being worth $12.50 that was many years ago, when cotton was selling at 7 cents?

A. Yes, sir we sold some for shipment to St. Louis at 4 cents.

Q. Then the advance of cotton to its present value has had a great deal to do with the advance of the land?

A. Yes, sir.

Mr. Moore: Your Honor, in order that the record be complete, I would like to introduce and consider read in evidence the act which originally created the Miller County Highway and Bridge District, being act 153 passed by the General Assembly of the State of Arkansas and approved March 5, 1915. Also the act in which the bridge district was divorced from the road district, and in which the assessment of benefits that had been made was confirmed. No. 15 passed by the general assembly of Arkansas and became a law January 29, 1917.

[fol. 170] The Court: Very well, they will be received in evidence.

"Act 153

An Act to lay off and establish a part of Miller County into a public Highway and Bridge District for the construction of public highways from the city of Texarkana to the various localities in the territory hereinafter described, and for the construction of a public bridge in connection with such highways over and across the Red River between Fulton and Index, and to organize and incorporate a Highway and Bridge District, and to provide for levying assessments and collecting the same, and for other purposes.

Be it enacted by the General Assembly of the State of Arkansas:

Section 1. That all the following territory lying and being situated in Garland, Homan and Lost Prairie townships of Miller County, to-wit:

Beginning on the State line between the States of Arkansas and Texas at the northwest corner of fractional section eighteen (18), township sixteen (16) south, range twenty-eight (28) west, thence east to the northeast corner of section sixteen (16), township sixteen (16) south, range twenty-eight (28) west, thence north to township line between townships fifteen (15) and sixteen (16) south, range twenty-eight (28) west, thence east on said township line to the west bank of the Red River, thence north and westerly along said west bank of Red River to the Texas State line, thence south to and along said State line to the beginning, be and the same is hereby created and constituted a Highway and Bridge District and said District shall be known as the 'Miller County Highway and Bridge District' and shall be a public agency and a body politic and corporate under said name and style, and by that name may sue and be sued, plead, and be impleaded, and have perpetual succession for the purposes hereinafter designated. The said district may have a common seal, and may make such by laws and regulations as from time to time may be deemed proper, not inconsistent with this Act or the laws of this State, for the purpose of carrying into effect the object of its creation. And said district may appoint all officers and agents which it deems necessary, and suitable,

for the conduct of the business of said corporation, and may do all other acts and things not inconsistent with the [fol. 171] laws of this State, which may be proper to carry into effect the purposes and objects of this Act.

Section 2. Said district shall have the power to construct and maintain sixty (60) miles of free public highways of such material as it may deem best, leading from the city of Texarkana to such point on the Red River between Fulton and Index, at which it may deem desirable and suitable to construct a bridge over and across said Red River in connection with the plan and system of such highways, and at such point so selected on Red River, said district shall have power to construct and maintain a free public bridge in connection with said highways over and across said Red River, and within the boundaries of the territory constituting said district in Miller County, and said district shall have the power to construct and maintain other free public highways in connection with the highway leading to said bridge, in the territory of said district, of such material as it may deem best, leading from the city of Texarkana to such other points and localities in said territory to which it may deem desirable and best calculated to serve the best interests of the people as a whole in said territory, but not to exceed in the aggregate in connection with the highway to said bridge, sixty (60) miles in length.

The commission shall have the power to grant a right-of-way over said bridge to any public utility upon such terms as the commission may determine; Provided, However, that concessions which may be granted to public utilities shall not interfere with the use of such bridge as a public highway.

Section 3. The affairs of said district shall be managed and controlled and all improvements authorized shall be made by a commission, which shall be composed of three land owners, residents of said district. They shall serve during the existence of said district, and in the event of a vacancy on said commission it shall be filled by appointment by the county judge of Miller County. E. W. Frost, J. R. Dale and Fred W. Offenhauser are hereby appointed the commission of said Miller County Highway and Bridge District.

Section 4. Within thirty days after the passage of this act said commisioners shall qualify by taking an oath that they will faithfully discharge the duties of their position, and shall not be financiallly interested, directly or indirectly, in any contract for material or construction, or any other other contract made by said commission. And should any commissioner be interested directly or indirectly in any contract, as above described, he shall be guilty of a mis- [fol. 172] demeanor, and on conviction thereof shall be fined in any sum not less than one thousand dollars and not exceeding five thousand dollars. Said commissioners shall serve without compensation. They shall also elect one of their members president, who shall preside at all meetings of the commissioners. The president shall vote on all questions and shall be the chief executive officer of said district. They shall appoint a secretary, who shall hold at their pleasure, and who shall keep a record of the proceedings of the commission and perform such duties as may be required by this Act and the commission, and shall receive such compensation as the commission may determine. And in carrying out the objects of this Act and their incorporation, said commission may appoint and employ all officers, attorneys and agents whom they deem necessary and suitable in the conduct of the business of said corporation, and may do all other acts and things not inconsistent with the laws of this State which may be proper to carry into effect the purposes of this Act.

Section 5. The said Board of Commissioners shall have the power, and it is hereby made their duty, to build and construct a public highway from the city of Texarkana over (and) across the territory in said district to such point on Red River as they may select for the purpose of building the bridge over and across Red River in connection with said highway and system of highways, between Fulton and Index, as aforesaid. Provided, the commission shall only improve such public highways as may have been laid out or may hereafter be laid out by the county court of Miller County. And said board shall also have power, and it is hereby made their duty, to build and construct a bridge over and across said Red River at such point suitable in all respects for footmen, vehicles, railroads and other public utilities, if in the opinion of said commission it may be

deemed necessary under this Act. Said highways and bridges to be built where, in the discretion of said Board of Commissioners, it is most practicable and best to commence, locate and end; and they shall have power to protect and maintain such highways and bridge in such effective condition as honest, able and energetic efforts on their part may obtain, by building, rebuilding and repairing, or such other work as the board may deem necessary. They shall have power to employ all agents necessary for the execution of their duty. They shall determine the crown, height, slope and grade of said highways, as well as the dimensions and character, in every respect, of said bridge, and make all needful regulations, and do all things in their opinion [fol. 173] necessary to secure and promote the public convenience and safety over said highways and bridge.

And the district, through the commissioners, shall have the right of eminent domain, and such right is hereby expressly conferred upon them for the purpose of condemning [and] land, levees and buildings, or other property, public or private for the purpose of the right-of-way of said highway and bridge, wherever located as aforesaid; and they shall further have the right of eminent domain, and the same is hereby expressly conferred upon them, for the purpose of condemning any approach or approaches to said bridge at either end thereof in whatsoever county the same may be located; and in assessing damage arising from the condemnation of the land of any person or corporation for the purposes set forth in this Act, the accruing benefit to his or its land or lands by the construction of such highways and bridge, when constructed, must be taken into consideration.

Section 6. For the purpose of carrying into effect the provisions of this Act, the commission shall form plans for the construction of such highway and bridge, and shall procure estimates of the cost thereof. For this purpose they may employ engineers and other agents as may be needful, and may provide for their compensation which, with all other necessary expenses shall be taken as a part of the cost of said improvement, and such expenses and cost so incurred shall be charged on the real property in the district, and shall be raised and paid by assessments as hereinafter prescribed for the payment of the public improvement itself.

Section 7. Immediately after ascertaining the cost of the public improvement contemplated by this Act, the commission shall appoint three assessors, who shall reside in the district; each of said assessors shall, before entering upon the discharge of his duty, take an oath to well and truly assess to the best of his ability the value of all benefits to be received by each land owner by reason of the proposed improvement, as affecting each tract of land in said district. They shall ascertain the value of the real property within said district without said improvements, and also the value of all the roads, tramroads, street railroads, electric light and water plants, rights-of-way, telephone and telegraph lines, pipe lines, and all other franchises whatsoever connected with the realty in said district, an assessment according to the value of the benefit that will accrue to it by reason of the construction of said highways and bridge.

[fol. 174] The Board of Assessors shall within one hundred and twenty (120) days after their organization complete their duties by filing with the commission a list showing the description of the property of the district, the owners' names, as far as same appear from the last county assessment, and such corrections as they may ascertain should be made, and the valuation of each lot, tract or parcel of land, railroad, street railway, gas and electric light plant, water plant, tramroads, telephone and telegraph lines, pipe lines and all other franchises of whatsoever description in any way connected with the realty in said district without the improvement, and the valuation with the improvement, and the benefit estimated to accrue to each lot, tract or parcel of land, railroad, tramroad, street railway, gas and electric light plant, water plant, telegraph and telephone lines, pipe lines and all other franchises of whatsoever description in any way connected with the realty in said district by reason of the improvement; and shall file the same with the county clerk of Miller County for the inspection of all persons interested. Notice of the filing of said assessments shall be given by publication in one newspaper published in Texarkana, Arkansas, and said notice shall set a date not less than thirty days distant, and the place where any complaint may be made by any land owner, railroad, tramroad, street railway, gas and electric plant, water plant, telegraph or telephone line, pipe line or any franchise what-

soever in any way connected with the realty in said district before the Board of Assessors of any assessment made against his or its property.

The said Board of Assessors shall correct any inequality, injustices, or errors, which they may find in the assessment, and shall hold meetings for the purpose of hearing the complaints of the owners of any such property in said district as to said assessment, and shall increase or decrease the assessment so as to adjust the burden of the assessment to the benefit to accrue to the real property. Provided, that in reassessing the benefits for the making of said improvements, the assessors shall never diminish the total amount of the assessed benefits in case said district shall have incurred debts. The Board of Assessors may adjourn from day to day until the hearings are completed. Any property owners as aforesaid, aggrieved by the action of said Board of Assessors, may take an appeal to the commission within thirty days from the action of the Board of Assessors, upon his complaint; or any other property owner [fol.175] aforesaid may appeal from the action of the Board of Assessors from any assessment which acts unequally upon his property.

The commission shall hear all appeals and determine the same, and appeals may be taken from the commission to the County Court in the same manner as is now provided by law that appeals may be taken from the county equalization board to the County Court, which said appeals, shall be taken within thirty (30) days from the action of the commission complained of.

The assessors shall be paid the sum of three ($3.00) dollars per day for the time actually engaged by them in the discharge of the duties of their office.

When the assessors have completed their work, and all appeals therefrom have been heard by the commission, the commissioners shall then equalize the assessment so as to equalize and adjust all the assessments to the benefit to accrue to each lot or parcel of real estate, railroad, tramroad, street railway, gas and electric light plant, water plant, or right-of-way, telephone or telegraph line, pipe line, or any other franchise whatsoever, connected with the realty of said district assessed, which said equalization shall

be completed within thirty days after the time for appeal from the Board of Assessors has expired.

Section 8. As soon as all of the assessments have been equalized and adjusted as aforesaid, the commission shall by resolution charge each lot, tract or parcel of real estate, railroad, tramroad, right-of-way, street railway, gas and electric plant, water plant, pipe line, telephone and telegraph lines and all other franchises in any way connected with the realty in said district, with an assessment equal to the benefit estimated in the said assessment list, to accrue to such land, lot, tract or parcel of land, railroad, tramroad, gas and electric plant, water plant, pipe line, telephone and telegraph line, and all other franchises of whatsoever nature in any way connected with the realty in said district, and the commission shall apportion such assessment into annual installments so as to realize annually only such a sum of money as will be necessary to meet the expenses incurred in each year from interest and a sinking fund to pay the bonded indebtedness, and for such improvements and maintenance as the commission shall determine shall be paid from the assessment annually.

provided, that the improvements herein undertaken shall not exceed 15 per cent of the valuation of real property in [fol. 176] said district, subject to improvement district assessment, as ascertained by the State and county assessments of said property for the year next preceding the time when the assessment herein provided for may be made. Provided, however, that this limitation of 15 per cent of valuation shall not prevent an annual assessment, as hereafter provided, for the maintenance of the improvement after the cost of the construction has been paid.

That all railroads, street railroads, tramroads, right-of-way, roadbeds, pipe lines, telegraph and telephone lines, and all other franchises in any way connected with the realty of said territory, and the appurtenances in said district, shall be assessed according to the betterments and increase in value in like manner as herein prescribed for real estate, except that said assessment shall be made per mile, and no error in the name and residence of the owners or the description thereof shall invalidate said assessment, if sufficient description of the property sought to be taxed is

given to ascertain where it is situated. The commission shall annually appoint a Board of Assessors, which shall each year perform the duties hereinbefore provided, which Board of Assessors shall continue as far as possible the assessment first made, but shall take into consideration the improvements and enhanced value so as to equalize the burdens of taxation for the district.

Section 9. Said assessments declared in said resolution shall be a charge and a lien against all real estate in the said district from the date of said resolution, and shall be entitled to preference over all judgments, executions, incumbrances, or other liens whatsoever, and shall continue until such assessment, with any penalties and costs which may accrue thereon, shall be paid; provided, that as between grantor and grantee all payments on same after the date of the transfer of the real property in said district shall be payable by the grantee.

Section 10. The board shall annually, before the first of September determine the amount of taxes which will be required for the succeeding year, and enter upon its records an order levying the same upon the benefits to the property of the district, subject to taxation thereunder.

The amount of taxes herein provided for shall be annually extended upon the tax books of the county, and collected by the collector of county along with other taxes, and for his services in making such collections the collector shall re- [fol. 177] ceive a commission of one per cent; and the same shall by the collector be paid over to the treasurer of the district at the same time that he pays over the county funds. If any collector shall fail to collect the road tax along with the other taxes, he shall be subject to a penalty of one hundred dollars for each instance in which he shall collect from an individual the other taxes and omit the road tax, unless the road tax has been enjoined by a court of competent jurisdiction, to be recovered in a suit brought by the commissioners to the use of the district; and the county clerk shall be subjected to a like penalty for each case in which he shall fail to enter the road tax on the tax books.

Section 11. In order to hasten the work, the board may borrow money at a rate of interest not exceeding six per cent per annum, may issue negotiable bonds therefor,

signed by the members of the board, and may mortgage all assessments for the repayment thereof. It may also issue to the contractors who do the work its negotiable evidences of debt, bearing interest at not exceeding six per cent.

No bonds issued under the terms of this Act shall run for more than thirty years; and all issues of bonds may be divided so that a portion thereof may mature each year as the assessments are collected, or they may all be made payable at the same time, with proper provisions for a sinking fund.

Section 12. The secretary of the board shall annually deliver to the county clerk before he has made up the tax books, a list of all the property subject to taxation thereunder within the district, with the amounts assessed against each tract to be paid at the next collection of taxes. All taxes levied under the terms of this Act shall be payable between the first Monday in January and the tenth day of April of each year; and if any taxes levied by the County Court in pursuance to this Act are not paid at maturity, the collector shall not embrace such taxes in the taxes for which he shall sell such property, but he shall report such delinquencies to the Board of Commissioners of said district who shall add to the amount of the tax a penalty of twenty-five per cent; and said Board of Commissioners shall enforce the collection by chancery proceedings in the Chancery Court of Miller County; and such court shall give judgment against such property for the amount of such taxes, and said penalty of twenty-five per cent, and interest [fol. 178] on same, from the end of sixty days allowed for the collection thereof, at a rate of 6 per cent per annum, and all costs of the proceedings. Such judgment shall provide for the sale of said delinquent property for cash, by a commissioner of the court, after advertising as hereinafter set out. Said proceedings and judgment shall be in the nature of proceedings in rem, and it shall be immaterial that the ownership of said property be incorrectly alleged in said proceedings, and such judgment shall be enforced wholly against such property, and not against any other property or estate of said defendant. All or any part of said delinquent property may be included in one suit instituted for the collection of said delinquent taxes, etc., as

aforesaid, and notice of the pendency of such suit shall be given by publication weekly for four weeks before judgment is entered, for the sale of said property, in some newspaper published in the county, where such suits may be pending, which public notice may be in the following form:

Miller County Highway and Bridge District

vs.

Delinquent Lands

All persons having or claiming an interest in any of the following described property, are hereby notified that suit is pending in the Chancery Court of Miller County, Arkansas, to enforce the collection of certain road taxes on the subjoined list of property, each supposed owner having been set opposite his or her or its property, together with the amounts severally due from each, to-wit:

(Then shall follow a list of supposed owners, with a descriptive list of said delinquent property, and amounts due thereon respectfully, as aforesaid.)

And said public notice may conclude in the following form:

All persons and corporations interested in said property, are hereby notified that they are required by law to appear within four weeks and make defendant to said suit, or the same will be taken for confessed and final judgment will be entered directing the sale of said property for the purpose of collecting said taxes, together with the payment of interest, penalty and costs allowed by law.

—— ——, Clerk of Said Court.

And said suit shall stand for trial at the first term of court after the complaint may be filed, if said four weeks shall expire either before the first day of the term, or dur- [fol. 179] ing the term of court to which said suits are brought respectively, unless a continuance be granted for good cause shown, within the discretion of the court; and such continuance for good cause shown, may be granted as to a part of said property of defendants without affecting the duty of the court to dispose finally of the others

as to whom no continuance may be granted; and in all cases where notice has been properly given as aforesaid, and where no answer has been filed, or if filed, and the cause decided for the plaintiff, the court, by its decree, shall grant the relief as prayed for in the complaint; and shall direct said commissioners to sell the property described in the complaint at the court house door of Miller County, at public outcry, to the highest and best bidder, for cash in hand, after having first advertised such sale (such advertisement may include all [all] the property described in the decree), weekly for two weeks, consecutively, in some newspaper published in the county, if there be one, and if no newspaper then that such advertisement be published in some newspaper in adjoining county, and if all the property be not sold on the day as advertised, then such sale shall continue from day to day until completed; and said commissioners shall by proper deeds convey to the purchaser the property so sold, and the title to said property shall thereupon become vested in such purchaser as against all others whomsoever, saving to infants and insane persons having no guardian or curator the right they now have by law to appear and except to said proceedings within three years after their disabilities are removed.

In all suits brought under this section a reasonable attorney's fee shall be taxed in favor of the attorney for the plaintiff, which fee shall be added to the amount of the costs.

In case the commissioner shall fail to commence suit within sixty days after the taxes become delinquent, the holder of any bond issued by the district shall have the right to bring suit for the collection of the delinquent assessments, and the proceedings in such suit brought by the bond holder shall in all respects be governed by the provisions applicable to suits by the commissioners.

Section 13. Said suits shall be conducted in the name of such road district, and in accordance with the practice and proceedings of chancery courts in this state, except as herein otherwise provided, and neither attorneys ad litem nor guardians ad litem, nor any of the provisions of Section 6254 of Kirby's Digest of the Statutes of Arkansas shall be [fol. 180] required; and said suits may be disposed of on oral testimony, as in ordinary suits at law; and this law

shall be liberally construed to give to said assessment and tax lists the effect of bona fide mortgages for a valuable consideration and a first lien upon said property, as against all persons having an interest therein. In such suits it shall be sufficient to allege generally and briefly the organization of the district and the nonpayment of taxes, setting forth the description of the property proceeded against, and the amount chargeable to each tract, with prayer for foreclosure. Provided, that no informality or irregularity in holding any of the meetings provided for therein, or valuation or assessment of the lands, or in the name of the owners, or the number of acres therein, shall be a valid defense to such action; provided, that in any case where the property is offered for sale by said commissioners, as provided by this Act, and the sum of the tax due, together with interest, cost and penalty, is not bid for the same, the said commissioners shall bid the same off in the name of the Board of Commissioners of said road district, bidding therefor the whole amount due as aforesaid; and shall execute his deed therefor as in other cases under this Act, conveying such property to such board, and such deed when duly executed in conformity to the provisions of this Act, and recorded, shall be received as evidence in all cases, showing an indefeasible title in said purchaser, unassailable in either law or equity.

Provided, that at any time within two years after the rendition of the final decree of the Chancery Court herein provided for, the owner of the property may file his petition in the court, rendering the decree, alleging the payment of taxes on said property for the year for which they were sold; and upon the establishment of that fact the court shall vacate and set aside the decree; and, provided, that any land owner shall have the right — redeem any and all property sold at such sale within the time now fixed by law for redemption from sales under foreclosure of improvement district liens.

Section 14. All bonds issued by the commissioners under the terms of this Act, shall be secured by a lien on all property, subject to taxation hereunder, and the Board of Directors shall see to it that a tax is levied annually, and collected under the provisions of this Bill, so long as it may be neces-

sary to pay any bond issued or obligation contracted under its authority; and the making of said assessments or levy and collection may be enforced by mandamus.

[fol. 181] If any bond or interest coupon on any bond issued by said board is not paid within thirty days after its maturity, it shall be the duty of the Chancery Court of Miller County, on application of any holder of such bonds or interest coupon so overdue, to appoint a receiver to collect the taxes aforesaid, and the assessor to reassess the benefits if necessary, and the proceeds of such taxes and collections shall be applied, after the payment of costs, first to overdue interest, and then to payment pro rata of all bonds issued by the said board, which are then due and payable, and the said receiver may be directed by suit to foreclose the lien of said taxes on said lands, and the suits so brought by the said receiver shall be conducted in all matters as suits by the board, as hereinbefore provided, and with like effect, and the decrees and deeds herein shall have the same presumption in their favor; provided, however, that when all such sums have been paid the receiver shall be discharged, and the affairs of the district conducted by the Board of Directors of said district as hereinbefore provided.

Section 15. In the event of the description of any lot, tract or parcel of property upon the list of the assessment hereinbefore provided to be made, shall for any reason be uncertain, indefinite or insufficient, then in any suit brought to enforce the payment of any assessment, the court shall have power to correct such description and enforce the collection of any assessment due thereon, having due regard for the rights of any parties who may have intervened.

Section 16. No allowance to the special commissioner for his services shall exceed $5.00 for each lot, tract or parcel of land sold and certificate made by him.

Section 17. If any appeal be taken from any decree herein mentioned, the Supreme Court shall advance the cause on its docket and shall hear and decide the case at as early a day as is practicable. Said transcript shall be filed in the office of the clerk of the Supreme Court within twenty days after rendering the decree appealed from.

Section 18. The Supreme Court shall either affirm or reverse the decree appealed from, or render such a decree as should have been rendered by the lower court, or shall remand the same to the inferior court without delay.

Section 19. In taking such an appeal the appellant shall only include in the transcript so much of the record as relates to his own land.

[fol. 182] Section 20. No appeal shall be prosecuted from any decree after the expiration of twenty days herein granted for filing the transcript in the clerk's office of Supreme Court.

Section 21. A majority of the commission shall constitute a quorum for the transaction of business and the commission may prescribe rules for its own government and fix its time of meeting. And the commission shall have the right to employ such other persons and agents not herein mentioned as may in their judgment be necessary to carry out the object and purposes of this Act. The commissioner shall make an annual statement showing in full all the transactions of the commission for the year, and a copy of said annual statement shall be filed with the clerk of Miller County. The first annual statement shall be filed within one year from the organization of the commission, and annually thereafter.

Section 22. The highway and bridge district herein created shall have the power to acquire and hold the real and personal property and may receive gifts, donations and bonuses for the purpose of carrying out the object and purposes of this Act, and to receive rents from the concessions heretofore authorized from public utilities, railroads and transportation companies for the purposes of construction, repair or maintenance of the public improvement herein contemplated. The said district shall have power to acquire such real estate as may be necessary for the right-of-way of said highway and bridge, and approaches and abutments thereto, and the commission is clothed with authority to contract for the necessary land for said highway and bridge and approaches and abutments thereto, and pledge so much of the revenue of the district as may be necessary to pay for the same. The said highway and bridge district herein

created may conduct, operate and maintain the highway and bridge, and necessary approaches thereto, along and over the public highways of the State of Arkansas or across and under waters or over any land or public works belonging to this State, and on or over lands of private individuals or corporations; provided just damages shall be paid to owners of the land taken or used for the highway and bridge, or its approaches and abutments.

Section 23. In the event that the highway and bridge district should fail to obtain by agreement with the owner of the property upon which said highway and bridge, its approaches and abutments are to be located, the right thereto, it may apply to the Circuit Court of the county in which the [fol. 183] property is located by petition to have the damages for so much of the property as is taken, and the right-of-way over the property itself, giving the owner of such property at least ten days' notice in writing of the time and place where such petition will be heard.

Section 24. In case [*of*] property sought to be condemned is owned by any individual or corporation, and is located in more than one county, the petition may be filed in any Circuit Court having jurisdiction of any county in which the whole or a part of such property may be located, and the proceedings had in such Circuit Court will apply to all such property designated in such petition.

Section 25. If the owner, or owners, of such property be non-residents of this State, infants and persons of unsound mind, such notice shall be given by publication in a newspaper in the county where the land is situated which is authorized by law to publish legal notices, which notice shall be published for the same length of time as may be required in other civil causes.

Section 26. In all cases of infants or persons of unsound mind when no legal representative or guardian appears in their behalf at the hearing it shall be the duty of the court to appoint a guardian ad litem who shall represent their interests for all purposes.

Section 27. Such petition shall, nearly as may be, describe the right-of-way which is sought, and for which damages

are asked to be assessed, whether improved or unimproved, and be sworn to by some one of the commissioners.

Section 28. It shall be the duty of the court to impanel a jury of twelve men as in other civil causes, to ascertain the amount of compensation which said district shall pay and the matter shall proceed and be determined as other civil causes.

Section 29. The amount of damages to be paid the owner of such lands for the right-of-way for the use of such district shall be determined and assessed irrespective of any benefits said owner may receive from any inprovement proposed by such district.

Section 30. In all cases where damages for the right-of-way for the use of the district has been assessed in the manner hereinbefore provided, it shall be the duty of such high-[fol. 184] way and bridge district to deposit with the court, or pay to the owners, the amount so assessed, and pay such costs as may in the discretion of the court be adjudged against it within thirty days after such assessment; whereupon, it shall and may be lawful for such highway and bridge district to enter upon, use and have the right-of-way over said land forever.

Section 31. Where the determination of questions in controversy in such proceedings is likely to retard the progress of the work on said highway and bridge, or its approaches and abutments thereto, the court or judge in vacation shall designate an amount of money to be deposited by such district, subject to the order of the court, and for the purpose of making such compensation when the amount thereof shall have been assessed as aforesaid, and said judge shall designate the place of such deposit.

Section 32. Whenever such deposit shall have been made in compliance with the order of the court, or judge, it shall be lawful for such district to enter upon such land and proceed with its work through and over the land in controversy prior to the assessment and payment of damages for the use and right to be determined as aforesaid.

Section 33. In all cases where such district shall not pay or deposit the amount of damages assessed as aforesaid

within thirty days after such assessment it shall forfeit all rights in the premises.

Section 34. The words "right-of-way" as used in this Act shall be construed to mean and include all grounds necessary for the construction of the highways and bridge, its approaches and abutments, and its piers, and all other necessary lands for the purposes of carrying out the construction of said highway and bridge.

Section 35. It is the intention and purpose of this Act to confer in the preceding twelve sections the right of condemnation as now exercised by telegraph, telephone and railroad corporation under sections 2947 to 2958 of Kirby's Digest, so far as the same may be applicable hereto.

Section 36. Authority is hereby conferred upon the County Court of Miller County to take over and acquire the highway and bridge, the construction of which is herein provided for, upon such terms as may be agreed upon as to its future maintenance by said court and the commission herein created, or their successors and officers; and au- [fol. 185] thority is also hereby conferred upon the County Court of Miller County to assist said commission in the construction of said highway and bridge by contributing to said commission any such of money on any terms it may deem proper out of any funds which it may now by law appropriate, levy and collect for bridge and road purposes. In the event the highway and bridge is not taken over by the County Court as a public highway of said county, then the commissioner- are authorized, after the improvement herein provided for is paid for, to annually levy assessments upon the real property of said district; said assessments to be apportioned upon the benefits to be derived from the maintenance of said highway and bridge for the purpose of maintaining same and its approaches, abutments and piers in good repair and condition so as to keep it forever open to the public.

Section 37. Whereas this Act is necessary for the preservation of the public health, peace and safety, an emergency is hereby declared to exist, and this Act shall take effect and be in force from and after its passage.

Approved March 5, 1915"

"Act 15

An Act to amend Act number 153 of the Acts of the General Assembly of the State of Arkansas of the year 1915, being an Act forming the Miller County Highway and Bridge District

Be it enacted by the General Assembly of the State of Arkansas:

That Act No. 153 of the General Assembly of the State of Arkansas of the session of 1915, entitled, 'An Act to lay off and establish a part of Miller County into a public Highway and Bridge District for the construction of public highways from the city of Texarkana to the various localities in the territory hereinafter described, and for the construction of a public bridge in connection with such highways over and across the Red river between Fulton and Index, and to organize and incorporate a Highway and Bridge district, and to provide for levying assessments and collecting the same, and for other purposes,' approved March 5, 1915, be amended to read as follows:

[fol. 186] Section 1. That all the following territory lying and being situated in Garland, Homan and Lost Prairie Townships of Miller County to-wit:

Beginning on the State line between the States of Arkansas and Texas at the northwest corner of fractional section (18) eighteen, township sixteen (16) south, range twenty-eight (28) west, thence east to the northeast corner of section sixteen (16), township sixteen (16) south, range twenty-eight (28) west, thence north to township line between townships fifteen (15) and sixteen (16) south, range twenty-eight (28) west, thence east on said township line to the west bank of the Red River, thence north and westerly along said west bank of Red river to the Texas State line, thence south to and along said State line to the beginning; also those parts of Hempstead and Lafayette counties which are south and west of Red river and north of the township line between townships fifteen (15) and sixteen (16) south, be and the same is hereby created and constituted a Highway and Bridge District and said district shall be known as the 'Miller County Highway and Bridge District,' and shall be a public agency and a body politic and corporate

under said name and style, and by that name may sue and be sued, plead and be impleaded, and have perpetual succession for the purposes hereinafter designated. The said district may have a common seal, and may make such by-laws and regulations as from time to time may be deemed proper, not inconsistent with this Act or the laws of this State, for the purpose of carrying into effect the object of its creation.

Section 2. Said district shall have the power to construct and maintain seventy-five (75) miles of free public highways, of such material as they may deem best, consisting of two main lines from the city of Texarkana northerly to the Red river, and from said city easterly to said river, with such branches as they may deem advantageous; and the plans for said highways heretofore adopted by said board are hereby ratified and confirmed, and declared to be the plans for said improvements, granting, however, to the board the power to build additional roads within said territory, or to vary said plans if it becomes desirable to do so.

Section 3. The affairs of said district shall be managed and controlled and all improvements authorized shall be made by a commission, which shall be composed of three land owners, resident of said district. They shall serve [fol. 187] during the existence of said district, and in the event of a vacancy on said commission it shall be filled by appointment by the remaining commissioners. E. W. Frost, J. R. Dale and Fred W. Offenhauser are hereby appointed the commission of said Miller County Highway and Bridge District.

Section 4. Within thirty days after the passage of this Act said commissioners shall qualify by taking an oath that they will faithfully discharge the duties of their position, and shall not be financially interested, directly or indirectly, in any contract for material or construction, or any other contract made by said commission. And should any commissioner be interested directly or indirectly in any contract, as above described, he shall be guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than one thousand dollars and not exceeding five thousand dollars. Said commissioners shall serve without

compensation. They shall elect one of their members president, who shall preside at all meetings of the commissioners. The president shall vote on all questions and shall be the chief executive officer of said district. They shall appoint a secretary, who shall hold at their pleasure, and who shall keep a record of the proceedings of the commission and perform such duties as may be required by this Act and the commission, and shall receive such compensation as the commission may determine. And in carrying out the objects of this Act and their incorporation, said commission may appoint and employ all officers, attorneys and agents whom they deem necessary and suitable in the conduct of the business of said corporation, and may do all other acts and things not inconsistent with the laws of the State which may be proper to carry into effect the purposes of this Act.

Section 5. Said Board of Commissioners shall have the power, and it is hereby made their duty, to construct the highways according to the plans heretofore laid down, with such additions thereto as may be found necessary, unless the [plabs] are changed as hereinafter provided; and they shall have the power to protect and maintain such highways in such effective condition as honest, able and energetic efforts on their part may obtain, by building, rebuilding and repairing, or such other work as the Board may deem necessary for the execution of their duty. They shall determine the crown, height, slope and grade of said highways.

Section 6. The assessment heretofore made by the assessors for said district is hereby ratified and confirmed as the [fol. 188] assessments of the benefits which will accrue from the making of the improvements herein contemplated, and the assessors heretofore named by the board shall proceed to make a similar assessment upon the lands in Hemstead and Lafayette counties hereby added to this district.

If the board changes its plans of improvement, it shall file such changed plans with the county clerk of Miller county, and if either the board or any individual thinks that, by reason of said changes in the plans, the assessment heretofore made has become inequitable, a new assessment of benefits shall be ordered by the board, and the board may, not oftener that once a year, order a re-assessment of the bene-

fits in the entire district; but in no event shall the total amount of the assessed benefits within the district ever be diminished; and if any future assessment should be for an amount less than the preceding assessment of benefits, such assessment shall be void, and the preceding assessment shall continue in force.

The assessment of the lands in Hempstead and Lafayette counties hereby added to the district shall be made in the same book as the present assessment and in the same manner.

Future assessments of benefits shall be made in books to be furnished by the board, which shall show the lands of the district as they appear on the county tax books, with such corrections as may be necessary, and shall also show the railroad, street railway, gas and electric light, water, tramroad, telephone, telegraph and pipe lines by the mile, and also all other franchises of whatever description in any way connected with the realty in the district. Opposite each piece of property shall be placed the name of the owner, if known to the assessors, and the amount of the betterments. Such assessment shall be filed with the county clerk of Miller County, for the inspection of all persons interested; and upon its filing, the secretary of the board shall give notice by publication in a newspaper published in Texarkana, Arkansas, that the assessment has been filed, and shall set a date not less than thirty days distant and a place where any person interested may appear before the Board of Assessors and complain of the assessment of his property or of the assessment of any other property in the district.

At the time fixed in said notice the Board of Assessors shall meet and shall hear the complaints of property owners, and shall increase or decrease the assessments so as to adjust the burden thereof to the benefit that will accrue. The [fol. 189] Board of Assessors may adjourn from day to day until the hearings are completed. Any property owner aggrieved by the action of the Board of Assessors may appeal to the commission within thirty days; and the commission shall meet at some convenient time and hear all appeals and determine the same, and their decision shall be final. The assessors shall be paid the sum of three dollars ($3.00) per day for the time they are actually engaged in the discharge of their duties.

Section 7. All the acts of the commissioners of said Miller County Highway and Bridge District, and of all their agents insofar as they have acted by the authority of the commissioners, and all acts of the assessors of said district are hereby ratified and confirmed, particularly the action of said commissioners in levying taxes upon the assessed benefits in said district, by their resolution adopted on the 5th day of December, 1916, and their action in issuing bonds of said district, numbered from one (1) to two hundred and twenty-three (223), and bearing date of November 1, 1916, for the aggregate sum of two hundred and twenty-three thousand dollars ($223,000.00); and the execution of the pledge to secure the same and also their action in settling with the St. Louis, Iron Mountain & Southern Railway Company, by accepting a cash sum of twenty thousand dollars (20,000.00), in lieu of the amount charged against said railroad by said tax levy, and made payable in installments; and the said board is authorized from time to time to issue other bonds as may be required, either for the purpose of completing the improvement herein contemplated or for the purpose of funding the bonds which may have been issued under this act; provided that the improvements authorized by this Act shall not cost more than ten per cent of the value of the real property in said district as authorized by the last State and county assessment made before the particular work is undertaken; but interest shall not be computed as part of such costs.

If, in the future, the assessed value of the property in the district shall be increased, and the power of the board to expend money for improvements shall increase proportionately, and the board shall have the authority to levy further taxes in excess of the ten per cent limit herein prescribed, for the purpose of [makinf] necessary repairs upon the highways improved by it.

Section 8. The assessors heretofore appointed shall continue to be the assessors of the district until discharged by [fol. 190] the board, which may appoint their successors from time to time.

Section 9. Said assessments shall be a charge and a lien against all real estate in the said district from the date of said resolution, and shall be entitled to preference over all

judgments, executions, incumbrances, or other liens whatsoever, and shall continue until such assessment, with any penalties and costs which may accrue thereon, shall be paid; provided, that as between grantor and grantee all payments on same after the date of the transfer of the real property in said district shall be payable by the grantee.

Section 10. Whenever the board shall issue any bonds, it shall levy upon the assessed benefits a tax, payable through a series of years until maturity of said bonds, of an amount sufficient to pay said bonds with interest as they mature; and may pledge and mortgage said levy to secure payment of such bonds.

In addition to this levy for the payment of the bonds, the board shall annually, before the first of September determine the amount of taxes which will be required for the succeeding year, and enter upon its records an order levying the same upon the benefits to the property of the district, subject to taxation thereunder.

The amount of taxes herein provided for shall be annually extended upon the tax books of the county, and collected by the collector of county along with other taxes, and for his services in making such collections the collector shall receive a commission of one per cent; and the same shall by the collector be paid over to the treasurer of the district at the same time that he pays over the county funds. If any collector shall fail to collect the road tax along with the other taxes, he shall be subject to a penalty of one hundred dollars for each instance in which he shall collect from an individual the other taxes and omit the road tax, unless the road tax has been enjoined by a court of competent jurisdiction, to be recovered in a suit brought by the commissioners to the use of the district; and the county clerk shall be subjected to a like penalty for each case in which he shall fail to enter the road tax on the tax books.

Section 11. The secretary of the board shall annually deliver to the county clerk of the respective counties before he has made up the tax books, a list of all the property subject to taxation thereunder within the district in his county, [fol. 191] with the amounts assessed against each tract to be paid at the next collection of taxes. All taxes levied under the terms of this Act shall be payable between the

first Monday in January and the tenth day of April of each year; and if any taxes levied in pursuance to this Act are not paid at maturity, the collector shall not embrace such taxes in the taxes for which he shall sell such property, but he shall report such delinquencies to the board of commissioners of said district who shall add to the amount of the tax a penalty of twenty-five per cent; and the said board of commissioners shall enforce the collection by chancery proceedings in the chancery court of Miller County; and such court shall give judgment against such property for the amount of such taxes, and said penalty of twenty-five per cent, and interest on same, from the end of said sixty days allowed for the collection thereof, at the rate of 6 per cent per annum, and all costs of the proceedings. Such judgments shall provide for the sale of said delinquent property for cash, by a commissioner of the court, after advertising as hereinafter set out. Said proceedings and judgment shall be in the nature of proceedings in rem, and it shall be immaterial that the ownership of said property be incorrectly alleged in said proceedings, and such judgment shall be enforced wholly against such property, and not against any other property or estate of said defendant. All or any part of said delinquent property may be included in one suit instituted for the collection of said delinquent taxes, etc., as aforesaid, and notice of the pendency of such suit shall be given by publication weekly for four weeks before judgment is entered, for the sale of said property, in some newspaper published in the county, where such suits may be pending, which public notice may be in the following form:

'Miller County Highway and Bridge District

vs.

Delinquent Lands

All persons having or claiming an interest in any of the following described property, are hereby notified that suit is pending in the chancery court of —— county, Arkansas, to enforce the collection of certain road taxes on the subjoined list of property, the name of each supposed owner have been set opposite his or her or its property together with the amounts severally due from each, to-wit:

(Then shall follow a list of supposed owners with a descriptive list of said delinquent property, and amounts due thereon respectively, as aforesaid.)'

[fol. 192] And said public notice may conclude in the following form:

'All persons and corporations interested in said property, are hereby notified that they are required by law to appear in four weeks and make defense to said suit, or the same will be taken for confessed, and final judgment will be entered directing the sale of said property for the purpose of collecting said taxes, together with the payment of interest, penalty and costs allowed by law.

—— ——, Clerk of Said Court.'

And said suit shall stand for trial at the first term of court after the complaint may be filed, if said four weeks shall expire before the first day of the term, or during the term of court to which said suits are brought respectively, unless a continuance be granted for good cause shown, within the discretion of the court; and such continuance for good cause shown, may be granted as to a part of said property or defendants without affecting the duty of the court to dispose finally of the others as to whom no continuance may be granted; and in all cases where notice has been properly given as aforesaid, and where no answer has been filed, or if filed, and the cause decided for the plaintiff, the court by its decree, shall grant the relief as prayed for in the complaint; and shall direct said commissioners to sell the property described in the complaint at the courthouse door of the county where the property lies, at public outcry, to the highest and best bidder for cash in hand, after having first advertised such sale (such advertisement may include all the property described in the decree), weekly for two weeks, consecutively, in some newspaper published in the county where the land lies, and if all the property be not sold on the day as advertised, then such sale shall continue from day to day until completed; and said commissioners shall by proper deeds convey to the person the property so sold, and the title to said property shall thereupon become vested in such purchaser as against all others whomsoever, saving to infants and insane persons having no guardian or curator the right they now have by

law to appear and except to said proceedings within three years after their disabilities are removed.

In all suits brought under this section a reasonable attorney's fee shall be taxed in favor of the attorney for the plaintiff, which fee shall be added to the amount of the costs. [fol. 193] In case the commissioners shall fail to commence suit within sixty days after the taxes become delinquent, the holder of any bond issued by the district shall have the right to bring suit for the collection of the delinquent assessments, and the proceedings in such suit brought by the bond holder shall in all respects be governed by the provisions applicable to suits by the commissioners.

Section 12. Said suits shall be conducted in the name of such road districts, and in accordance with the practice and proceedings of chancery courts in this State, except as herein otherwise provided, and neither attorneys ad litem nor guardians ad litem, nor any of the provisions of section 6254 of Kirby's Digest of the Statutes of Arkansas shall be required; and said suits may be disposed of on oral testimony, as in ordinary suits at law; and this law shall be liberally construed to give to said assessment and tax lists the effect of bona fide mortgages for a valuable consideration and a first lien upon said property, as against all persons having an interest therein. In such suits it shall be sufficient to allege generally and briefly the organization of the district and the non-payment of taxes, setting forth the description of the property proceeded against, and the amount chargeable to each tract, with prayer for foreclosure. Provided, that no informality or irregularity in holding any of the meetings provided for herein, or valuation or assessment of the lands, or in the name of the owners, or the number of acres therein, shall be a valid defense to such action; provided, that in any case where the property is offered for sale by said commissioners, as provided by this act, and the sum of the tax due, together with interest, cost and penalty, is not bid for the same, the said commissioner shall bid the same off in the name of said board of commissioners of said road district, bidding therefor the whole amount due as aforesaid; and shall execute his deed therefor as in other cases under this Act, conveying such property to such board, and such deed when

duly executed in conformity to the provisions of this Act, and recorded, shall be received as evidence in all cases, showing an [indefeasable] title in said purchaser, unassailable in either law or equit.

Provided, that at any time within two years after the rendition of the final decree of the chancery court therein provided for, the owner of the property may file his petition in [fol. 194] the court, rendering the decree, alleging the payment of taxes on said property for the year for which they were sold; and upon the establishment of that fact the court shall vacate and set aside the decree; and, provided, that any land owner shall have the right to redeem any and all property sold at such sale within the time now fixed by law for redemption from sales under foreclosure of improvement district liens.

Section 13. All bonds issued by the commissioners, under the terms of this Act, shall be secured by a lien on all property subject to taxation hereunder, and the board of directors shall see to it that a tax is levied and collected under the provisions of this bill, so long as it may be necessary to pay any bond issued or obligation contracted under its authority; and the making of said assessments or levy and collection may be enforced by mandamus.

If any bond or interest coupon on any bond issued by said board is not paid within thirty days after its maturity, it shall be the duty of the chancery court of Miller county, on application of any holder of such bonds or interest coupon so overdue, to appoint a receiver to collect the taxes aforesaid, and an assessor to reassess the benefits if necessary, and the proceeds of such taxes and collection shall be applied, after the payment of costs, first to overdue interest, and then to payment pro rata of all bonds issued by the said board, which are then due and payable, and the said receiver may be directed by suit to foreclose the lien of said taxes on said lands, and the suits so brought by the said receiver shall be conducted in all matters as suits by the board, as hereinbefore provided, and with like effect, and the decrees and deeds herein shall have the same presumptions in their favor; provided, however, that when all such sums have been paid the receiver shall be discharged, and the affairs of the district conducted by the board of directors of said district as hereinbefore provided.

Section 14. In the event the description of any lot, tract or parcel of property upon the list of the assessment hereinbefore provided to be made, shall for any reason be uncertain, indefinite or insufficient, then in any suit brought to enforce the payment of any assessment, the court shall have power to correct such description and enforce the collection of any assessment due thereon, having due regard for the rights of any parties who may have intervened.

[fol. 195] Section 15. No allowance to the special commissioner for his services shall exceed $1.00 for each lot, tract or parcel of land sold and certificate made by him.

Section 16. If any appeal be taken from any decree herein mentioned, the Supreme Court shall advance the cause on its docket and shall hear and decide the case at as early a day as is practicable. Said transcript shall be filed in the office of the clerk of the Supreme Court within twenty days after rendering the decree appealed from.

Section 17. The Supreme Court shall either affirm or reverse the decree appealed from, or render such a decree as should have been rendered by the lower court, or shall remand the same to the inferior court without delay.

Section 18. In taking an appeal the appellant shall only include in the transcript so much of the record as relates to his own land.

Section 19. No appeal shall be prosecuted from any decree after the expiration of twenty days herein granted for filing the transcript in the clerk's office of Supreme Court.

Section 20. A majority of the commission shall constitute a quorum for the transaction of business and the commission may prescribe rules for its own government and fix its times of meeting. And the commission shall have the right to employ such other persons and agents not herein mentioned as may in their judgment be necessary to carry out the objects and purposes of this Act. The commissioner shall make an annual statement showing in full all the transactions of the commission for the year, and a copy of said annual statement shall be filed with the county clerk of Miller county. The first annual statement shall be filed

within one year from the organization of the commission and annually thereafter.

Section 21. The commission shall improve only such highways as may have been declared to be public highways by the county court of the county where the highways run.

Section 22. This Act being necessary for the preservation of the public health, peace and safety, an emergency is hereby declared, and this Act shall take effect and be in force from and after its passage. Approved January 29, 1917."

Mr. Arnold: In connection with these special acts, I don't know whether it is necessary to introduce them or not.

The Court: I think not.

[fol. 196] Mr. Arnold: It may be a matter of convenience. Then I will ask that act 16, an act to create Red River Bridge District, of the acts of 1917, pages 78, be also introduced in evidence. It is the other branch of the original formation of the district, which has a bearing upon it.

Mr. Moore: I can't see the idea of that. You might say the act creating the Miller Levee District has a bearing on it. I don't see that this other act can have any bearing whatever, it is an entirely separate organization.

The Court: I think it may be received for whatever purpose it may have.

"Act 16

An Act to Create the Red River Bridge District

Be it enacted by the General Assembly of the State of Arkansas:

Section 1. That all of Little River county, and all that part of Miller county within the following boundaries: Beginning on the state line between the states of Arkansas and Texas at the northwest corner of fractional section eighteen (18), township sixteen (16), south, range twenty-eight (28) west, thence east to the northeast corner of section sixteen (16), township sixteen (16) south, range twenty-eight (28) west, thence north to township line between townships fifteen (15) and sixteen (16) south, range

twenty eight (28) west, thence east on said township line to the west bank of the Red river, thence north and westerly along said west bank of Red River to the Texas State line, thence south to and along said State line to the beginning; also those parts of Hempstead and Lafayette counties that are now west and south of Red River and north of the township line between township fifteen (15) and sixteen (16) south; be and the same is hereby created an improvement district under the name of the Red River Bridge District, and the same shall be a public agency and a body politic and corporate under said name and style, and by that name it may sue and be sued, and have perpetual succession for the purposes hereinafter set forth.

The said district may have a common seal, and may make such by-laws and regulations as from time to time its commissioners may deem proper, not inconsistent with this act or the laws of this State, for the purpose of carrying into effect the object of its creation.

Section 2. Said District is organized for the purpose of constructing and maintaining a free public bridge across the Red River at some point to be selected by the Com- [fol. 197] missioners of the District within its limits; and the board of commissioners shall have the power to grant a right-of-way over said bridge to any public utility upon such terms as it may determine; provided, however, that concessions which may be granted to public utilities shall not essentially interfere with the use of such bridge as a public highway.

Section 3. The affairs of said district shall be managed by a board of commissioners, which shall be composed of three residents of Miller County, who are owners of land in the district. E. W. Frost, J. R. Dale and Fred W. Offenhauser of Miller County, and Lon T. Jones, H. G. Sanderson and W. M. Gatwright of Little River county, are hereby named commissioners of said District. If any vacancy shall occur upon the board amongst the members from Miller county, the vacancy shall be filled by the remaining members of that county. If any vacancy shall occur amongst the members of the board from Little River county, it shall be filled by the remaining members of Little River county. The members of the board may be removed by the circuit

court of the county for which they are appointed upon charges of neglect of duty, incapacity, dishonesty or misfeasance in office; but the charges shall be in writing, and the hearing shall be upon notice, and the commissioners removed shall have the right of appeal.

Section 4. Within thirty days after the passage of this Act said commissioners shall qualify by taking oath that they will faithfully discharge the duties of their position, and shall not be financially interested, directly or indirectly in any contract for material or construction, or any other contract made by said commissioners. And should any commission be interested directly or indirectly in any contract, as above described, he shall be guilty of a misdemeanor, and on conviction thereof shall be fined any sum not less than one thousand dollars and not exceeding five thousand dollars. They shall elect one of their members president, who shall preside at all meetings of the commissioners. The president shall vote on all questions and shall be the chief executive officer of said District. They shall appoint a secretary, who shall hold at their pleasure, and who shall keep a record of the proceedings of the commissioners and perform such duties as may be required by this Act, and the commission, and shall receive such compensation as the commissioners may determine. And in carrying out the objects of this Act and their incorporation, said [fol. 198] commissioners may appoint and employ all officers, attorneys and agents whom they deem necessary suitable in the conduct of the business of said corporation, and may do all other Acts and things not inconsistent with the laws of this State which may be proper to carry into effect the purposes of this Act.

Section 5. In order to secure a proper site for the building of the bridge and its approaches, the commission shall have the right of eminent domain, which shall be exercised in the manner provided for the exercise of right of eminent domain by railroad, telegraph and telephone companies.

Section 6. For the purpose of carrying into effect the provisions of this Act, the commission shall form plans for the construction of such bridge, and shall procure estimates

of the cost thereof. For this purpose they may employ engineers and other agents as may be needful, and may provide for their compensation which, with all other necessary expenses, shall be taken as a part of the cost of said improvement, and such expenses and costs so incurred shall be *shall be* charged on the real property in the district, and shall be raised and paid by assessments as hereinafter prescribed for the payment of the public improvement itself.

Section 7. Immediately after ascertaining the cost of the improvement contemplated by this Act, the commission shall appoint two assessors who shall be resident land owners of Miller county, and two assessors who shall be resident land owners of Little River County, and who shall constitute the board of assessors of the District. Each assessor shall, before entering upon the discharge of his duties, take an oath well and truly to assess the value of all benefits to be received by each land owner by reason of the proposed improvement. They shall then proceed to assess the value of the benefits which shall accrue to each piece of real property within the said district and also to all railroads, tramroads, street railroads, electric light and power plants, telephone and telegraph lines, and all other franchises, connected with the realty within said district; and they shall enter the same in duplicate books made for the purpose, in which the lands and other property shall be described as the same appear on the last county assessment, with such corrections as may be necessary, with the names of the supposed owners opposite thereto, and the amount of the benefits assessed. They shall subscribe said assessment, and one copy thereof shall be filed with the county clerk of Miller county, and one copy with the county clerk [fol. 199] of Little River county, for the inspection of all persons interested. Notice of the filing of said assessment shall be given by the secretary of the board for two weeks by publication in a newspaper published in the city of Texarkana, and by one published in the town of Ashdown. Said notice shall fix a date, not less than thirty days from the first publication, and a place in the city of Texarkana, and a place upon a different date in the town of Ashdown, where complaint may be made by the owner of any property assessed before the board of assessors.

On the dates fixed in said notice the board of assessors shall assemble at the respective places, and shall hear the complaint of all owners of property within the county where they are sitting, and shall, increase or decrease the assessment, after having heard the complaints of the property owners, so as to adjust the burden of the assessment to the benefit which shall accrue to the property. The board of assessors may adjourn from time to time until the hearings are completed. Any property owner who deems himself aggrieved by the action of said board of assessors may take an appeal from the actions of the assessors to the board of commissioners within thirty days. The commission shall hear all appeals and determine the same, and their finding in the premises shall be final.

The assessors shall be paid three dollars ($3.00) per day for the time actually engaged in the discharge of the duties of their office. They shall continue to hold office at the pleasure of the board, and the board may direct a re-assessment not oftener than once a year; but the total amount of the assessment shall never be diminished after the board has incurred debts, and if on any reassessment the total amount of the assessed benefits is less than in the preceding assessment, such reassessment shall be void, and the previous assessment shall remain the assessment of the District until a new assessment is ordered by the board.

Assessment of railroads, street railroads, tramroads, roadbeds, pipe lines, telegraph and telephone lines shall be by the mile, and not by the acre.

The amount of interest which will accrue on bonds issued by the district shall be included and added to the tax; but the interest to accrue on account of the issuing of said bonds shall not be construed as a part of the cost of con- [fol. 200] struction in determining whether or not the expenses and costs of making said improvements are, or are not equal to or in excess of the benefits assessed.

When the assessments is made and filed with the county clerks, as above provided, the owners of property subject thereto shall have the privilege of paying their assessments in full within thirty days after the assessment becomes final; but all such assessments shall be made payable in installments, so that not more than five per cent (5%) shall be collectible in any one year against the wishes of the land

owner; and in the event that any land owner avails himself of this indulgence the deferred installments of the assessed benefits shall bear interest at the rate of six per cent (6%) per annum, and shall be payable only in installments as levied.

The levy of the assessment may be made by way of proportional amounts of the total assessed benefits, and interest need not be calculated until it is necessary to do so to avoid exceeding the total amount of the benefits and interest.

Section 8. In order to make the improvement contemplated by this Act, the board may issue its negotiable bonds, bearing a rate of interest not exceeding six per cent (6%), for an amount not exceeding the estimated cost of the work, payable at such times and places as the board may determine. Said bonds shall not be sold for less than par, unless by unanimous vote of the board. To secure the payment of said bonds, the board may pledge and mortgage its assessments of benefits.

Section 9. When the assessments have been equalized and adjusted by the board of commissioners said board shall proceed, by resolution entered upon its minutes, to levy upon the assessed benefits a tax sufficient to pay the estimated cost of the work, with incidental expenses; but said assessment shall be divided into installments, so that not more than five per cent (5%) of the assessed benefits shall be collected in any one year. Provided, however, that no improvement shall be undertaken that will cost more than five per cent (5%) of the valuation of the property subject to taxation hereunder within the district; and if it be ascertained that the improvement hereby contemplated cannot be made within that limit of cost, the same shall be abandoned; but in estimating the cost of the work interest upon money borrowed shall not be deemed a part of the cost; nor shall said limitation of five per cent (5%) prevent [fol. 201] an annual assessment in excess thereof for the maintenance of the improvement after the construction thereof.

Section 10. Said assessment as declared in said resolution shall be a charge and a lien against all real estate in the said district from the date of said resolution, and shall

be entitled to preference over all judgments, executions, incumbrances, or other liens whatsoever, and shall continue until such assessment, with any penalties and costs which may accrue thereon, shall be paid; provided, that as between grantor and grantee all payments on same after the date of the transfer of the real property in said District shall be payable by the grantee.

Section 11. The board shall annually, before the first of September, determine the amount of taxes which will be required for the succeeding year, and enter upon its records an order levying the same upon the benefits to the property of the district, subject to taxation thereunder.

The amount of taxes herein provided for shall be annually extended upon the tax books of the county, and collected by the collector of the counties along with other taxes, and for his services in making such collections the collector shall receive a commission of one per cent; and the same shall by the collector be paid over to the treasurer of the district at the same time that he pays over the county funds. If any collector shall fail to collect the bridge tax along with the other taxes, he shall be subject to a penalty of one hundred dollars for each instance in which he shall collect from an individual the other taxes and omit the road tax, unless the bridges tax has been enjoined by a court of competent jurisdiction, to be recovered in a suit brought by the commissioners to the use of the district; and the county clerk shall be subjected to a like penalty for each case in which he shall fail to enter the bridge tax on the tax books.

Section 12. The secretary of the board shall annually deliver to the county clerk before he has made up the tax books, a list of all the property subject to taxation thereunder within the district, with the amounts assessed against each tract to be paid at the next collection of taxes. All taxes levied under the terms of this Act shall be payable between the first Monday in January and the tenth day of April of each year; and if any taxes levied in pursuance to this Act are not paid at maturity, the collector shall not embrace such taxes in the taxes for which he shall sell such property, but he shall report such delinquencies to the board of commissioners of said District who shall add to the amount of the tax a penalty of twenty-five per cent, and said

[fol. 202] board of commissioners shall enforce the collection by chancery proceedings in the chancery court of the county where the property lies; and such court shall give judgment against such property for the amount of such taxes, and said penalty of twenty-five per cent, and interest on same, from the end of sixty days allowed for the collection thereof, at the rate of 6 per cent per annum, and all costs of the proceedings. Such judgment shall provide for the sale of said delinquent property for cash, by a commissioner of the court, after advertising as hereinafter set out. Said proceedings and judgment shall be in the nature of proceedings in rem, and it shall be immaterial that the ownership of said property be incorrectly alleged in said proceedings, and such judgment shall be enforced wholly against such property, and not against any other property or estate of said defendant. All or any part of said delinquent property may be included in one suit instituted for the collection of said delinquent taxes, etc., as aforesaid, and notice of the pendency of such suit shall be given by publication weekly for four weeks before judgment is entered, for the sale of said property, in some newspaper published in the county, where such suits may be pending, which public notice may be in the following form:

"Red River Bridge District

vs.

Delinquent Lands

All persons having or claiming an interest in any of the following described property, are hereby notified that suit is pending in the chancery court of —— County, Arkansas, to enforce the collection of certain bridge taxes on the subjoined list of property, each supposed owner having been set opposite his or her or its property, together with the amounts severally due from each, to-wit:

(Then shall follow a list of supposed owners, with a descriptive list of said delinquent property, and amounts due thereon respectively, as aforesaid.)"

And said public notice may conclude in the following form:

"All persons and corporations interested in said property, are hereby notified that they are required by law to appear within four weeks and make defense to said suit or the same will be taken for confessed and final judgment will be entered directing the sale of said property for the pur- [fol. 203] pose of collecting said taxes, together with the payment of interest, penalty and costs allowed by law.

—— ——, Clerk of said Court."

And said suit shall stand for trial at the first term of court after the complaint may be filed, if said four weeks shall expire either before the first day of the term, or during the term of court to which said suits are brought respectively, unless a continuance be granted for good cause shown, within the discretion of the court; and such continuance for good cause shown may be granted as to a part of said property of defendants without [effecting] the duty of the court to dispose finally of the others as to whom no continuance may be granted; and in all cases where notice has been properly given as aforesaid, and where no answer has been filed, and the cause decided for the plaintiff, the court, by its decree, shall grant the relief as prayed for in the complaint; and shall direct said commissioners to sell the property described in the complaint at the courthouse door of the county where the property lies, at public outcry, to the highest and best bidder, for cash in hand, having first advertised such sale (such advertisement may include all the property described in the decree), weekly for two weeks, consecutively, in some newspaper published in the county, if there be one, and if no newspaper then that such advertisement be published in some newspaper in — adjoining county, and if all the property be not sold on the day as advertised, then such sale shall continue from day to day until completed; and said commissioner shall by proper deeds convey to the purchaser the property so sold, and the title to said property shall thereupon become vested in such purchaser as against all others whomsoever, saving to infants and insane persons having no guardian or curator the right they now have by law to appear and except to said proceedings within three years after their disabilities are removed.

In all suits brought under this section a reasonable attorney's fee shall be taxed in favor of the attorney for the plaintiff, which fee shall be added to the amount of the costs.

In case the commissioners shall fail to commence suit within sixty days after the taxes become delinquent, the holder of any bond issued by the district shall have the right to bring suit for the collection of the delinquent assessments and the proceedings in such suit brought by the bond holder [fol. 204] shall in all respects be governed by the provisions applicable to suits by the commissioners.

Section 13. Said suits shall be conducted in the name of such bridge district, and in accordance with the practice and proceedings of chancery courts in this State except as herein otherwise provided, and neither attorneys ad litem nor guardians ad litem, nor any of the provisions of section 6254 of Kirby's Digest of the Statutes of Arkansas shall be required; and said suits may be disposed of on oral testimony, as in ordinary suits at law; and this law shall be literally construed to give to said assessment and tax lists the effect of bona fide mortgages for a valuable consideration and a first lien upon said property, as against all persons having an interest therein. In such [cuits] it shall be sufficient to allege generally and briefly the organization of the district and the non-payment of taxes, setting forth the description of the property proceeded against, and the amount chargeable to each tract, with prayer for foreclosure. Provided, that no informality or irregularity in holding any of the meetings provided for herein, or valuation or assessment of the lands, or in the name of the owners, or the number of acres therein, shall be a valid defense to such action; provided, that in any case where the property is offered for sale by said commissioners, as provided by this Act, and the sum of the tax due, together with interest, cost and penalty, is not bid for the same, the said commissioners shall bid the same off in the name of the board of commissioners of said bridge district, bidding therefor the whole amount due as aforesaid; and shall execute his deed therefor as in other cases under this Act, conveying such property to such board, and such deed when duly executed in conformity to the provisions of this Act, and recorded, shall be recieved as evidence in all cases, showing an indefeasible title in said purchaser, unassailable in either law or equity.

Provided, that at any time within two years after the rendition of the final decree of the [chancer-] court herein provided for, the owner of the property may file his petition in the court, rendering the decree, alleging the payment of taxes on said property for the year for which they were sold; and upon the establishment of that fact the court shall vacate and set aside the decree; and provided, that any land owner shall have the right to redeem any and all property sold at such sale within the time now fixed by law for redemption from sales under foreclosure of improvement district liens.

[fol. 205] Section —. All bonds issued by the commissioners under the terms of this Act, shall be secured by a lien on all property, subject to taxation hereunder, and the board of commissioners shall see to it that a tax is levied, and collected under the provisions of this bill, so long as it may be necessary to pay any bond issued or obligation contracted under its authority; and the making of said assessments or levy and collection may be enforced by mandamus.

If any bond or interest coupon on any bond issued by said board is not paid [with-] thirty days after its maturity, it shall be the duty of the chancery court of Miller County on application of any holder of such bonds or interest coupon so overdue, to appoint a receiver to collect the taxes aforesaid, and an assessor to reassess the benefits if necessary, and the proceeds of such taxes and collections shall be applied after the payment of costs, first to overdue interest, and then to payment pro rata of all bonds issued by the said board, which are then due and payable, and the said receiver may be directed by suit to foreclose the lien of said taxes on said lands, and the suits so brought by the said receiver shall be conducted in all matters as suits by the board, as hereinbefore provided, and with like effect, and the decree and deeds herein shall have the same presumptions in their favor; provided, however, that when all such sums have been paid, the receiver shall be discharged, and the affairs of the district conducted by the board of directors of said District as hereinbefore provided.

Section 15. In the event *of* the description of any lot, tract or parcel of property upon the lists of the assessment hereinbefore provided to be made, shall for any reason be

uncertain, indefinite or insufficient, then in any suit brought to enforce the payment of any assessment, the court shall have power to correct such description and enforce the collection of any assessment due thereon, having due regards for the rights of any parties who may have intervened.

Section 16. No allowance to the special commissioner for his services shall exceed $5.00 for each lot, tract or parcel of land sold and certificate made by him.

Section 17. If an appeal be taken from any decree herein mentioned, the Supreme Court shall advance the cause on its docket and shall hear and decide the case at as early a day as is practicable. Said transcript shall be filed in the office of the clerk of the Supreme Court within twenty days after rendering the decree appealed from.

[fol. 206] Section 18. The Supreme Court shall either affirm or reverse the decree appealed from, or render such a decree as should have been rendered by the lower court, or shall remand the same to the inferior court without delay.

Section 19. In taking such an appeal the appellant shall only include in the transcript so much of the record as relates to his own land.

Section 20. No appeal shall be prosecuted from any decree after the expiration of twenty days herein granted for filing the transcript in the clerk's office of Supreme Court.

Section 21. A majority of the commission shall constitute a quorum for the transaction of business and the commission may prescribe rules for its own government and fix its time of meeting. And the commission shall have the right to employ such other persons and agents not herein mentioned as may in their judgment be necessary to carry out the object and purposes of this Act. The commission shall make and annual statement showing in full all the transactions of the commission for the year, and a copy of said annual statement shall be filed with the county clerks of Miller and Little River counties. The first annual statement shall be filed within one year from the organization of the commission and annually thereafter.

Section 22. This Act being for the immediate preservation of the public peace, health and safety, an emergency

is hereby declared, and this act shall take effect and be in force from and after its passage.

Approved January 29, 1917."

R. A. McGrew, being recalled, testified in rebuttal as follows:

Direct examination.

By Mr. Arnold:

Q. You testified yesterday that in 1920 and following that time the costs of reconstructing the pipe line would be, I believe you said, about $11,500 a mile?

A. Yes.

Q. I will ask you to state what per cent of the cost of that construction is involved in the hauling and the distribution of the pipe itself along the line?

A. My testimony yesterday, I think, for stringing, distribution of materials would run between $375 and $400 per mile at that time and the total cost of all line construction would be in the neighborhood of $11,500 a mile. So [fol. 207] that would throw the cost of distribution of materials to amount to, roughly, 4 per cent.

Q. Four per cent of the cost of construction?

A. Four per cent of the total cost.

Q. Is this definition of the stringing include hauling it from the railroad and putting it on the right-of-way of the pipe line?

A. Yes, sir, it includes the total cost of handling materials from the point of shipment to the right-of-way. That is one of the prime items of pipe line construction in handling an estimate, that is always included as an item, unloading and stringing.

Q. Un-oading, hauling and stringing?

A. Yes, sir, it is the transportation of items involved in the transportation from point of shipment to the point of ultimate use on the right-of-way.

Cross-examination.

By Mr. Moore:

Q. The price you state per mile at that time was approximately $11,000.00?

A. That was my estimate of construction.

Q. That is for a single line of pipe?

A. Single line of 8-inch pipe line.

Q. Then where you had four lines, as you had here, it would be about $44,000 per mile, it would [*more*] no difference in per mile cost?

A. It would be four times what the other would be.

Q. What I am trying to get at is this $11,500 is the cost of laying one string of it?

A. One string of 8-inch pipe.

Q. If you laid a second it would be $11,500?

A. For one 8-inch line.

Q. It would cost as much to lay?

A. I was giving my opinion,—

Q. I am asking you if it would not cost equally as much to lay the second pipe line?

A. I made myself clear that it cost $11,500 per mile to construct.

Q. You decline to answer whether it would cost that much to lay a second line?

A. The statement itself is an answer.

By Mr. Arnold:

Q. That includes the value of the pipe itself?

A. It includes the total cost.

[fol. 208] Louis Josephs, being recalled, tesified in rebuttal as follows:

Direct examination.

By Mr. Arnold:

It has been testified that the total assessments of benefits made during the year 1920 against the Prairie Pipe Line Company is $60,000. What was the rate during the years 1921, 1922 and 1923?

A. The rate of benefits, the rate of proportion of the benefits of that $60,000 benefits assessed as the total benefits against the company, Your Honor, was 10 mills.

Q. How much would that be, the total payments that would be made by the pipe line company for each of those years?

A. Just $600.

The Court: One per cent?

A. One per cent, yes, sir. Mr. Black, I believe it was, made a statement here that he came to the conclusion that his company would have to pay $60,000 in taxes to the road district and that is the impression that I desire to correct. That is the benefits assessed against the company, Mr. Moore, but by no means, or manner of means would that be the taxes that they would have to pay.

Q. Since the tax has been reduced to 8½ mills then the tax now under that would be less than $600?

A. Fifteen per cent less.

Q. Would be a reduction of $90 for this year. Then the total taxes spread over the 20 years that the bond runs would be not in excess of $12,000 and probably a total of not in excess of $20,000?

A. Mr. Moore, if the entire 20 years period carried a one per cent assessment, even in that event the taxes that they would pay would not exceed $12,000. But it has never been that. It began at 6⅔ and went up to 10 and is reduced to 8 and will be further reduced in proportion to the amount we receive of the highway tax.

Cross-examination.

By Mr. Moore:

Q. What is the outstanding bond indebtedness?

A. $353,000.00

Q. Are the directors getting ready to issue some more bonds?

A. $35,000.00.

Q. This district don't automatically close itself?

A. The first bonds will be retired in 20 years from the date of issue, and all the succeeding bonds will automatically [fol. 209] be retired 20 years from date of issue and the

final bond as I recall now, Your Honor, the last one either 1940 or 1941.

Q. What do you mean by automatically retires?

A. They were all made 20 year bonds.

Q. They will be retired when paid?

A. Yes, sir. There will be no additional raise then in taxes against any taxpayer in the district for this additional $35,000.00.

Q. That is, so long as you are in charge?

A. No, I don't take any credit for it whatever. It is the policy of the board to assess no more taxation on the total benefits that is necessary to retire the matured bonds that year and a small amount for overhead and maintenance of the road.

Q. There must be maintenance?

A. Some maintenance.

Q. The life of the board continues perpetually?

A. Yes, this board continues.

Q. This new bond issue we referred to a minute ago is to make a concrete road?

A. On the state line, and we look also to have one to Fulton. We tried to get it. Your son as Senator tried to get it but by the defeat of the amendment to the Constitu-ion we can't have it.

The Court: The father destroyed the efforts of the son?

A. Yes, sir, he certainly did.

Q. The levy was made annually?

A. Yes, sir.

Q. There has no levy been made through future years?

A. No, sir.

Q. Every year you make a levy such as the board concedes to be necessary?

A. Necessary to retire bonds, interest and small amounts for overhead and maintenance.

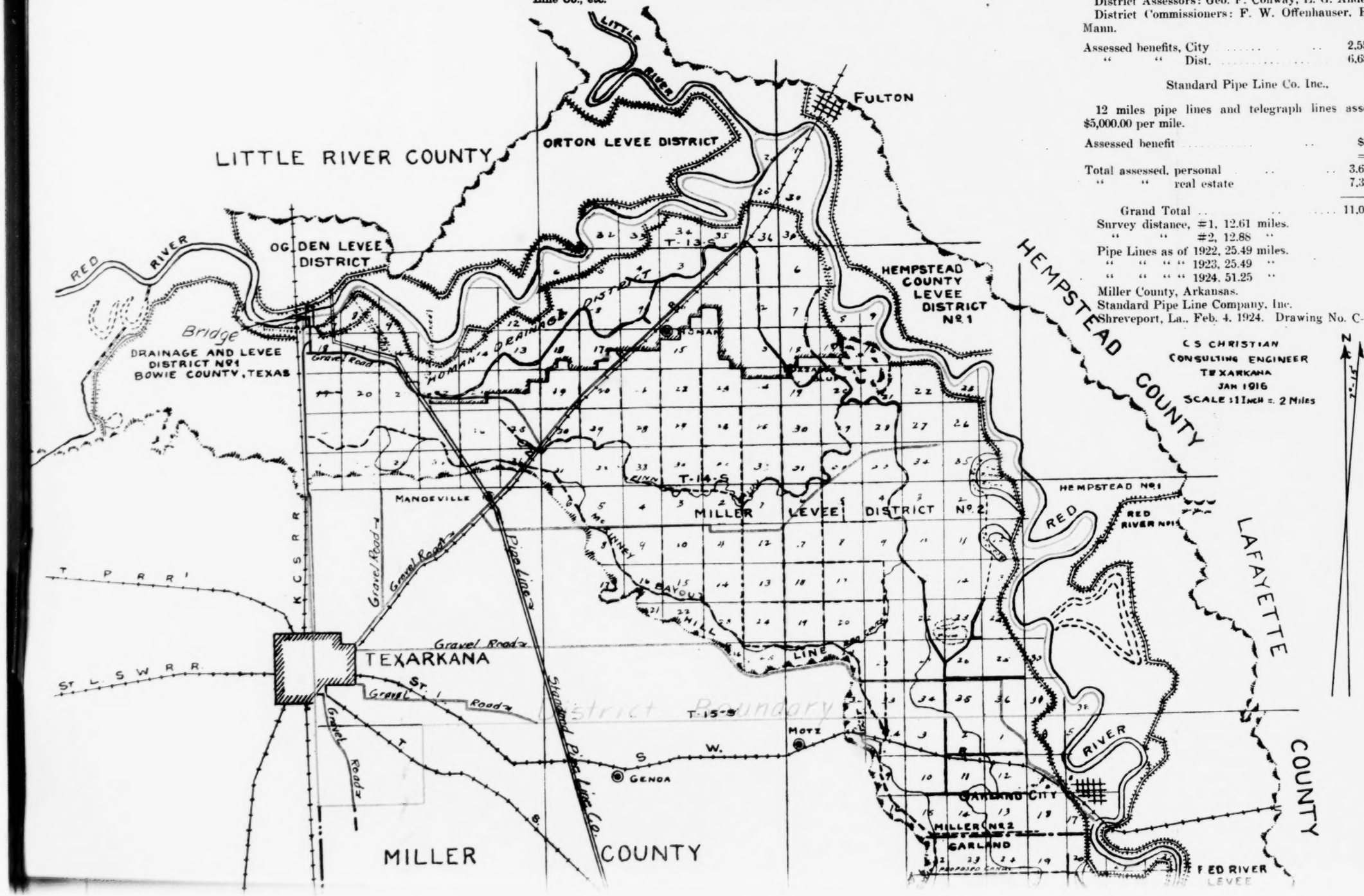
Q. So it is with the Board how much they shall assess each year?

A. Yes, sir.

By Mr. Moore:

Q. Under the present Harrelson Act what amount are you to receive out of the Miller County Highway and Bridge District?

Map of Miller County, Arkansas, Showing Location of Miller Levee District No. 2 and Lines of Standard Pipe Line Co., etc.



Miller County Highway District

Reassessment, filed July 24, 1920.
District Assessors: Geo. F. Conway, E. G. Anderson.
District Commissioners: F. W. Offenhauser, R. H. T. Mann.

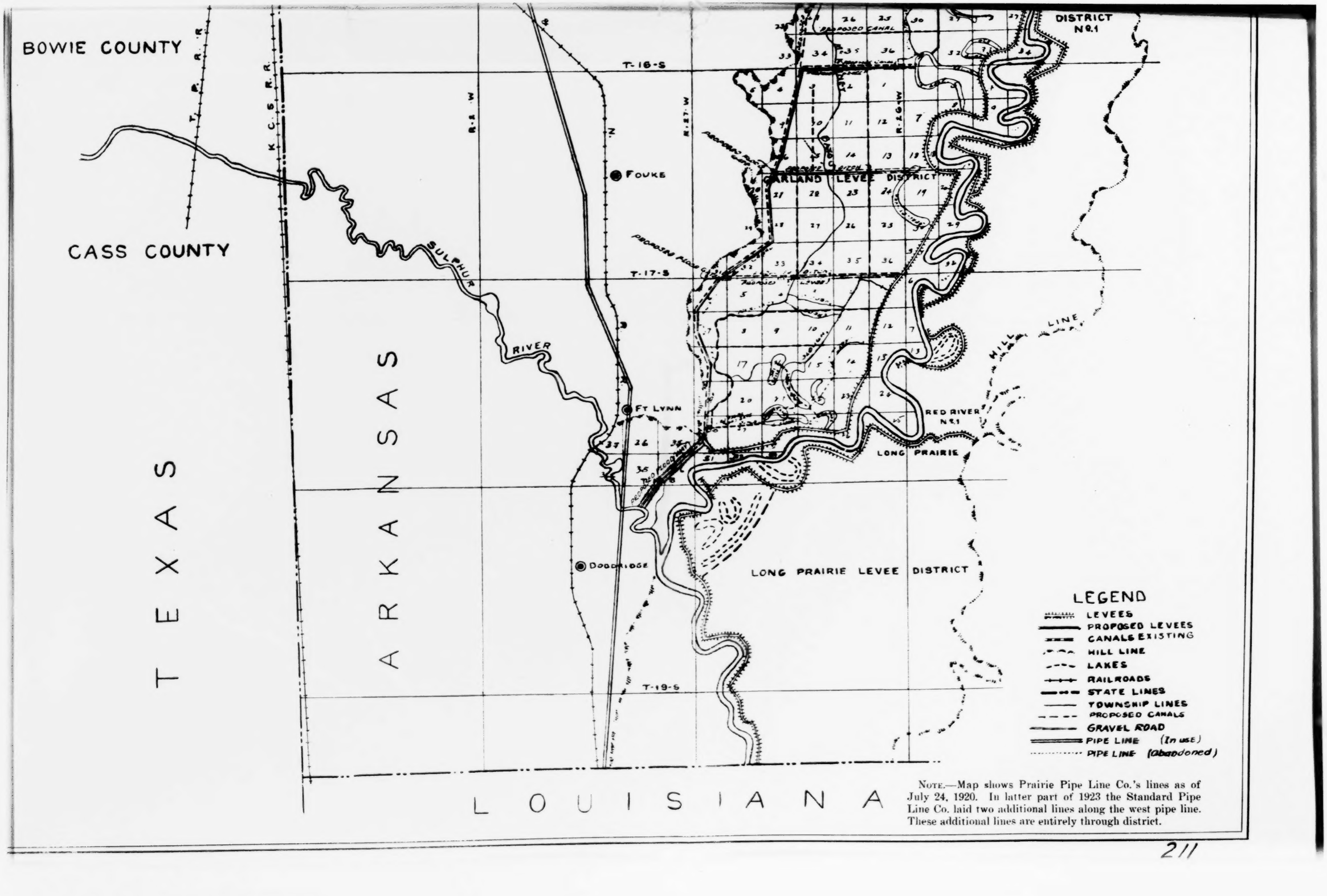
Assessed benefits, City	2,558,210.00
" " Dist.	6,687,178.00

Standard Pipe Line Co. Inc.,

12 miles pipe lines and telegraph lines assessed at $5,000.00 per mile.

Assessed benefit	$60,000.00
Total assessed, personal	3,650,291.00
" " real estate	7,345,265.00
Grand Total	11,001,555.00

Survey distance, #1, 12.61 miles.
" " #2, 12.88 "
Pipe Lines as of 1922, 25.49 miles.
" " " " 1923, 25.49 "
" " " " 1924, 51.25 "
Miller County, Arkansas.
Standard Pipe Line Company, Inc.
Shreveport, La., Feb. 4, 1924. Drawing No. C-132.



NOTE.—Map shows Prairie Pipe Line Co.'s lines as of July 24, 1920. In latter part of 1923 the Standard Pipe Line Co. laid two additional lines along the west pipe line. These additional lines are entirely through district.

A. As received last year and has been certified to July 1st, this year, fifty per cent of the total. That is allocated [fol. 210] to the highways of Miller County, the other half going to the County Judge.

Q. To what amount?

A. $13,710.60 was the first payment.

Q. And for that reason the board reduced the taxes against the tax payers 15% this coming year?

A. The amount we will get this year is $21,000 or $22,000, and *by* that reason the taxes will be reduced for the next year.

Q. With reference to the new issue that Mr. Arnold has brought out, I think it is only fair to state there will be no [principle] retired, there will be only interest paid the first 7 years and at that time we will have matured and retired a total of [$400,-00] of the original $540,000 sold. So that, without any raise of taxes, even to the fraction of a mill, the interest on the $75,000 can be paid for the 7 years and when the $400,000 is retired this $35,000 can then step in and be retired without one raise of taxes.

STIPULATION RE PLAT OF MILLER COUNTY

It is agreed that the Plat of Miller County attached to this transcript shows the location of Miller Levee District No. 2, of the lines of the Standard Pipe Line Company, and all matters shown on the Exhibits in the form of maps as filed on behalf of both the plaintiff and the defendant.

Henry Moore, Jr., Attorney for Miller Levee District No. 2. David C. Arnold, Attorney for Standard Pipe Line Company.

(Here follows map marked side folio page 211.)

[fol. 212] This was all the evidence introduced at the trial of this cause.

ORDER APPROVING STATEMENT OF EVIDENCE

Approved as a correct statement of the evidence upon final hearing of this cause.

Frank A. Youmans, Judge.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed September 28, 1925

Comes Miller County Highway & Bridge District conceiving itself to be aggrieved by that certain final decree made and entered on the 14th day of September, 1925, in the above entitled cause does hereby appeal from said decree to the United States Circuit Court of Appeals for the Eighth Circuit for the reasons specified in their certain assignment of errors which is filed herewith and prays that the appeal may be allowed and the transcript of those portions of the record as may be duly settled under Rule 75 of the "Rules of Practice for the Court of Equity of the United States" duly authenticated may be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

Miller County Highway & Bridge District, by Henry Moore, Jr., Attorney.

Appeal allowed Sep. 28, 1925. Frank A. Youmans, Judge.

IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed September 28, 1925

Comes the defendant in the above styled cause and files this its assignment of errors upon which it will rely upon its appeal from the final decree heretofore entered herein by the District Court.

The said District Court erred in making and entering said decree and in the proceedings had in said cause prior thereto in the following particulars, to-wit:

1. The court erred in overruling the motion to dismiss in said cause filed by this defendant.

[fol. 213] 2. The court erred in finding and holding that the construction of the highway has not added and will not add anything to the value of the property of the plaintiff.

3. The court erred in finding and holding that the taxes levied, Five Thousand Dollars ($5,000.00) per mile, upon

plaintiff's right of way, pipe lines and telegraph and telephone lines is not laid upon the same plan as that allowed by law and followed in reference to other lands in the district.

4. The court erred in finding that the levy of an assessment of benefits of Five Thousand Dollars ($5,000.00) per mile is palpably arbitrary.

5. The court erred in finding that the benefits to plaintiff's property by means of the construction of the improved highway is speculative and conjectural.

6. The court erred in finding that the plaintiff is not estopped from maintaining this suit.

7. The court erred in finding that the Acts of the Legislature validating the levy of taxes and assessments made by defendant upon the property in the district did not validate the levy of such taxes against plaintiff's right of way and pipe line constructed thereon and further erred in holding that such taxes are arbitrary in so far as levied against plaintiff's property.

8. The court erred in failing to find that the assessment against the property of the plaintiff was valid and binding.

9. The court erred in not finding that the evidence introduced by the plaintiff was not sufficient to overcome the presumption of benefits raised by the Acts of the Legislature finding plaintiff's property [benefitted.]

10. The court erred in not finding that under the testimony substantial benefits was shown to have accrued to the plaintiff's property from the construction of the improved highway.

11. The court erred in not finding that the assessment of benefits laid against plaintiff's property in accordance with the Acts of the Legislature by mile rather than by acre; was, because of the different character of the plaintiff's property reasonable method of classification and assessment of benefits for road purposes.

[fol. 214] 12. The court erred in entering a decree herein in favor of the plaintiff and in failing to enter a decree herein for the defendant.

13. The court erred in failing to find both the facts and the law in favor of the defendant.

Wherefore, the defendant Miller County Highway & Bridge District, appealing prays that the decree entered as aforesaid against it may be wholly set aside; that the case between the plaintiff and defendant be remanded to the said District Court with directions to enter a decree herein in favor of the plaintiff and for such other further and different relief to which they in equity and good conscience may be entitled.

Miller County Highway & Bridge District, by Henry Moore, Jr., Attorneys.

Bond on appeal for $500.00, approved and filed October 3, 1925, omitted in printing.

[fol. 215] In the United States District Court

Precipe for Transcript of Record—Filed October 6, 1925

To William S. Wellshear, clerk of said court:

Please prepare and duly authenticate for the appeal of the defendant, Miller County Highway & Bridge District to the United States Circuit Court of Appeals for the Eighth Circuit, from the decree in the above entitled cause, entered the 14th day of September, 1925; the transcript incorporating the following portions therein and no other, to-wit:

1. Bill in Equity filed May 21, 1924;
2. Motion to dismiss, filed June 23rd, 1924;
3. Order of court overruling the motion to dismiss;
4. Bill in equity, filed as amended and substituted bill on March 20th, 1925;

[fol. 216 & 217] 5. Answer to amended and substituted bill in equity, filed April 2nd, 1925;

6. Findings of fact and law by the court, filed July 2nd, 1925;

7. All orders of the court made during the hearings of this cause;

8. Final decree of the court in this cause;

9. Statement of evidence finally approved by the court or Judge thereof (copy all testimony and exhibits);

10. The petition of the Miller County Highway & Bridge District for their appeal;

11. Assignment of errors for such appeal by above mentioned defendant;

12. The bond of the above mentioned defendant upon appeal;

13. Citations issued on such appeal showing the service thereof;

14. Notice of election of these defendants regarding the printing of record;

15. Defendant's precipe for transcript on appeal, dated at Texarkana, Arkansas, this 5th day of October, 1925.

Henry Moore, Jr., Solicitor for Miller County Highway & Bridge District.

Due service of a copy of the foregoing precipe at Texarkana, Arkansas, this 5th day of October, 1925, upon the plaintiff and appellee, the Standard Pipe Line Company, is hereby acknowledged and further service waived.

David C. Arnold, Solicitor for Standard Pipe Line Company.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 218] Appearances of counsel omitted in printing.

[fol. 219] Minute entry of argument and submission May 25, 1926, omitted in printing.

[fol. 220] In United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1926

No. 7338

Miller County Highway & Bridge District, Appellant,

vs.

Standard Pipe Line Company, Incorporated, Appellee

Appeal from the District Court of the United States for the Western District of Arkansas

Mr. Henry Moore, Jr., for appellant.

Mr. David C. Arnold and Mr. W. H. Arnold (Mr. T. M. Milling and Mr. W. H. Arnold, Jr., were with them on the brief), for appellee.

Before Stone and Lewis, Circuit Judges, and Symes, District Judge

Opinion—Filed April 18, 1927

Symes, District Judge, delivered the opinion of the court.

The Miller County Highway District was created by a special act of the legislature of Arkansas in 1915, and empowered to constructed 60 miles of highway and a bridge over the Red River. The usual district organization, consisting of a commission of three resident land owners was provided for, with the power and duty to appoint three assessors to assess all benefits accruing as a result of the improvements to the real property within the district, including railroads, pipe lines, etc., and all other franchises connected with the realty in said district. Later it was concluded that the bridge and roads could not be constructed within the limit of cost prescribed by the original act, to wit, 15 per cent of the value of the real property subject to assessment; so the law was re-enacted and amended by Act No. 15 of the year 1917, and additional land included. [fol. 221] This amendment ratified and confirmed the assessment theretofore made by the assessors, and provided for a similar assessment on the new lands, and increased the authorized mileage to 75 miles.

Under a third act relating to this district, being number 83 of the year 1925, the legislature declared that the assessments for benefits made by the district to be just, equitable and proportionate, and ratified the same.

By the original act notice of the assessment was required to be given by publication, and that the notice must set a date not less than 30 days distant, when complaints by any land owner, etc., may be heard. It was made the duties of the assessors to correct any inequality, etc. in assessments and increase or decrease the same, provided the total amount of the assessed benefits be not diminished. Full right of appeal from the action of the assessors was given to the commission, and thence to the county court. Compare House v. Rd. Imp. Dist. No. 2, Conway Co. (Ark.), 251 S. W. 12, Aff. 266 U. S. 175.

In 1922, and after the assessment of benefits had been made, the appellee here, plaintiff below, purchased from the Prairie Pipe Line Co., all of its property within the district and the state, and is now owner of certain pipe lines laid beneath the surface of the earth in the district, as a part of a continuous line running from Oklahoma through Arkansas to Louisiana. It does no business within the district, other than to maintain and operate its pipe line as part of an interstate system.

On May 21, 1924, it instituted this suit to enjoin the collection of any taxes upon an assessment of benefits of $60,000 made against its property; on the following grounds:

First, the property of the appellee within this district, is personal property not subject to local improvement assessments.

Second, it's pipe lines are in no manner benefited by the improvement.

Third, the alleged assessment is wholly arbitrary, discriminatory, etc., and violates the 14th Amendment to the Federal Constitution.

Fourth, that it is engaged exclusively in the transportation of petroleum as a common carrier for hire in interstate commerce, and the assessment constitutes an unlawful burden thereon.

[fol. 222] A decree in its favor was entered in the lower court, and the district appeals. Taking up the points made by the appellee in order—

First, the defendants's pipe line is real property included in the district for same reasons, according to the state authorities that rights of way railroad companies are included. See Missouri Pac. v. Connelly Bridge District, 142 Ark. 11, and compare Western Union Telegraph Co. v. Road Imp. Dist. No. 1, 222 S. W. 716, Standard Pipe Line Co. v. Index Sulphur Drainage Dist., Supreme Court of Ark., March 28, 1927. It will be noted that the legislative act creating the district expressly provided for the assessment of pipe lines.

Second and Third. Are the pipe lines or the property of the appellee in any manner benefited by the improvement of the roads and the building of the bridge; and is the alleged asessment wholly arbitrary and discriminatory, etc.? This question is not free from difficulty, and we find a mass, or rather wealth of authority thereon, both in this Court and in the Supreme Court of the United States. Appellee contends, and the lower court found, that the highway had not added, and will not add anything to the value of the plaintiff's property, or increase its revenue, the alleged benefits being at best speculative and conjectural only.

To the layman the direct benefits accruing to the pipe line as such, by reason of the construction of good roads, are not apparent. They do not bring appellee any new business, as it solicits none, and there is none available to it within the district or state. It obtains all its oil in Texas or Oklahoma, and conveys it through Arkansas to a terminus in Louisiana. Nor does it have any revenue from any source within the state. Its officers and employees took the witness stand and gave as their conclusions that it made absolutely no difference to the company whether it had the improvement or not.

These and other witnesses called by appellee testified, however; that when they put in two additional lines they used the new roads for hauling pipe and unloading it adjacent to the right of way; that the new roads resulted in great economies in time and cost, both in laying and repairing the line and in affording access to the same. Other

witnesses testified that on the occasion of a fire at appellee's pumping station, the Texarkana fire department, at its request, arrived in time to be of material assistance; that without the good roads they would not have attempted the run and risked the damage to equipment and danger to [fol. 223] the lives of the firemen that would have resulted; and that appellee generally used the new roads for heavy loads between certain points in preference to the existing dirt roads, though the latter were shorter and more direct.

Several farmers living in the district testified that the quality or size of their crops were not, of course, affected by the improvements, and that the only advantage of good roads to them was the factor of transportation and accessibility. The adoption of appellee's argument on this feature of the case would, with a few exceptions, perhaps, inevitably and logically require the lifting of the burden of assessment from every class of property sought to be assessed. Kansas City Ry. v. Rd. Dist. No. 3, Sevier Co., 266 U. S. 379, at 387.

The original act provides an opportunity for all the property owners aggrieved to appear before the board of assessors and have a hearing, with right to appeal to the commission, and from the commission to the county court. The appellee never availed itself of this remedy. They say that because they were a non-resident corporation they are not bound thereby. The record shows that they had local employees in the district, including a taxing officer, charged presumably with the duty of looking after tax matters. Their predecessor in title, the Prairie Company, paid three or four installments of these taxes without protest. There is testimony that Mr. Helford, who at one time had charge of the pipe line property in Miller County, knew the assessments were being made. Another witness testified that a letter was written by the tax commission to the pipe line company, giving them the information as to both the county, state and road taxes, under date of April 5, 1917, receipt of which was acknowledged.

While the authorities have not always been in harmony on this question, the cases now hold that the legislature of the state may organize special improvement districts and delegate full authority to local bodies, as was done in the instant case. If the proceedings are not void on their face,

and the procedure follows the statute, their action in assessing benefits cannot be assailed unless they are so palpably arbitrary as to present a plain case of abuse of power. The judgment of the state legislature in such matters is entitled to the highest respect, and to make a case under the 14th Amendment it must be shown that the benefits assessed are either wholly vague and speculative, or result in manifestly gross inequality when compared with the burdens.

[fol. 224] It may be observed that the procedure by which the value of the particular property of the appellee was arrived at and the amount of the benefits determined, does not commend itself to us as altogether fair, nor is the tax imposed against appellee entirely equitable as between it and other property owners within the district; but this, standing alone, is not decisive of the question. In Kansas City Sn. R. R. Co. v. Road Dist. No. 3 of Sevier County, 266 U. S. supra, the court discussed an almost identical statute, in which constitutional objections similar to those here presented were urged by the railroad company. The Court said:

"By a lone line of decisions in this Court it has been settled that, where the state constitution as construed by the state court of last resort does not provide otherwise, the legislature of a state may require that the cost of a local public improvement, such as the construction or reconstruction of a public road, be distributed over the lands particularly benefited and charged against them according to their value, their area or the benefits which they will receive; may itself determine what lands will be benefited and in what proportions they will share in the benefits, and may avail itself, for the purposes of that determination, of any information which it deems appropriate and sufficient, including such as may be afforded by reports and estimates made in prior assessment proceedings having the same object. Only where the legislative determination is palpably arbitrary, and therefore a plain abuse of power, can it be said to offend the due process of law clause of the Fourteenth Amendment. Spencer v. Merchant, 125 U. S. 345, 355-357; French v. Barber Asphalt Paving Co. 181 U. S. 324, 338, et seq.; Houck v. Little River Drainage District, 239 U. S. 254, 262,

265; Myles Salt Co. v. Iberia Drainage District 239 U. S. 478, 481; Branson v. Bush, 251 U. S. 182, 189; Valley Farms Co. v. County of Westchester, 261 U. S. 155, 163. And only where there is manifest and unreasonable discrimination in fixing the benefits which the several parcels will receive can the legislative determination be said to contravene the equal protection clause of that Amendment. Kansas City Southern Ry. Co. v. Road Improvement District No. 6, 256 U. S. 658; Thomas v. Kansas City Southern Ry. Co., 261 U. S. 481."

In Valley Farms Co. v. County of Westchester, supra, it was sought to cancel an assessment upon real property levied to construct a trunk sewer, which admittedly could not be utilized to benefit plaintiff's land until a system of [fol. 225] costly connecting sewers, not yet planned, were built. But because all lands within the district might ultimately be connected with some portion of the sewer, the court held that it could not be said the plaintiff derived no benefits therefrom, and reaffirmed the rule that the legislature may fix the basis of taxation or assessment of improvements, and its action could not be assailed under the 14th Amendment unless it was palpably arbitrary and a plain abuse. Quoting Houck v. Little River Drainage Dist. 239 U. S. 254. And, further, that "To justify an assessment it is not essential that the benefits be direct or immediate."

In Milheim v. Moffat Tunnel Dist., 262 U. S. 710, the Court said, p. 721:

"if a proposed improvement is one which the State has authority to make and pay for by assessments on property benefited, the legislature in the exercise of the taxing power has authority to determine by the statute imposing the tax, what lands may be and are in fact benefited by the improvement; and if it does so, its determination is conclusive upon the owners and the courts and cannot be assailed under the Fourteenth Amendment unless it is wholly unwarranted and a flagrant abuse, and by reason of its arbitrary character is mere confiscation of the particular property."

And, p. 723:

"Where a city charter gives property owners an opportunity to be heard before a board respecting the justice and validity of local assessments for proposed public improvements and empowers the board to determine such complaints before the assessments are made, parties who do not avail themselves of such opportunity cannot be heard to complain of such assessments as unconstitutional." Citing many other cases.

See also Missouri Pac. R. R. Co. v. Western Crawford Rd. Imp. Dist., 266 U. S. 187". And, finally, in Browning v. Hooper U. S. S. Jan. 4, 1926, the Supreme Court said:

"Where a local improvement territory is selected, and the burden is spread by the legislature or by a municipality to which the State has granted full legislative powers over the subject, the owners of property in the district have no constitutional right to be heard on the question of benefits."

[fol. 226] The Thornton case, 291 Fed. 518, and the Miller Levee Dist. case, 292 Fed. 474, in this Circuit, and Kansas City Sn. R. R. Co. v. Road Imp. Dist. No. 6, 256 U. S. 658, and Myles Salt Co. v. Iberia Drainage Dist., 239 U. S. 478, come within the exceptions pointed out by the above cases. For instance, in Kansas City Sn. R. R. Co. v. Road Imp. Dist., 256 U. S. supra, the Court found that the benefits assessed against the railroad disregarded both area and position, and were made without disclosing any basis therefor, and that the discrimination was so palpable and arbitrary as to amount to a denial of the equal protection of the law. Likewise in the Myles Salt Company case, supra, the discussion assumed as a fact that the property of the complainant taxed was included within the district, not for its benefit, but for the sole purpose of obtaining revenue therefrom, and that it was not possible to give it any of the benefits of the drainage.

The tendency of these very late authorities is to greatly narrow the constitutional grounds of objection to assessments of this character. They forbid us to weigh the benefits against the burdens, and require us to hold in the instant case that under all the circumstances there was sufficient justification for the legislative determination that appellee's property was benefited.

Fourth. Under this point appellee claims the assessment constitutes an unlawful burden on interstate commerce, and devotes its supplemental brief largely to this question. The authorities presented, however, are clearly distinguishable, dealing, as they do, with so-called "burdens" on interstate commerce; such as license fees, privilege taxes and other regulatory statutes, compliance with which is a condition precedent to doing business within the particular state. The assessment here is what is denominated as a general improvement tax, laid against the real property owned by appellee within the district on an ad valorem basis.

The rights of state or local authorities to levy general improvement taxes or assessments as such against all real property of corporations, foreign or domestic, having its situs within the state, irrespective of its use, so long as it is all treated alike, and the tax is not a burden or regulation of interstate commerce as such, cannot be doubted. The distinction is so clear and well established that extended discussion is unnecessary. Postal Telegraph-Cable Co. v. [fol. 227] Adams, 155 U. S. 688; Alpha Cement Co. v. Massachusetts, 268 U. S. 203; Union Tank Line v. Wright, 249 U. S., at 282; American Mfg. Co. v. St. Louis, 8 Fed. (2d) 447.

We are of the opinion that the decree of the lower court should be reversed, and it is so ordered.

[fol. 228] In United States Circuit Court of Appeals, Eighth Circuit

[Title omitted]

Decree—April 18, 1927

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Arkansas, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause be, and the same is hereby,

reversed with costs; and that Miller County Highway and Bridge District have and recover against the Standard Pipe Line Company, Incorporated, the sum of —— Dollars for its costs in this behalf expended and have execution therefor.

[fols. 229-238] Petition for rehearing, covering 10 pages, filed June 6, 1927, omitted from this print. It was denied and nothing more by order July 12, 1927.

[fol. 239] UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING PETITION FOR REHEARING—July 12, 1927

This cause came on this day to be heard upon the petition for a rehearing, filed by Counsel for Appellee.

On consideration whereof, it is now here ordered by this Court, that said petition for a rehearing of this cause, be, and the same is hereby, denied.

[fol. 240] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 241] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 21, 1921

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

End

(17)

FILED

OCT 5 1937

CHARLES ELMORE CROPLEY

CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937.

No. 577.

STANDARD PIPE LINE COMPANY, INCORPORATED, Petitioner,

vs.

MILLER COUNTY HIGHWAY & BRIDGE DISTRICT, Respondent.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AND BRIEF SUPPORTING SAME.

CASE ORIGINATED IN DISTRICT COURT OF THE UNITED STATES, WESTERN DISTRICT OF ARKANSAS, TEXARKANA DIVISION.

T. M. MILLING,
Of Shreveport, Louisiana,
WILLIAM H. ARNOLD,
WILLIAM H. ARNOLD, Jr.,
DAVID C. ARNOLD,
Of Texarkana, Arkansas,
Counsel for Petitioner.

(33,029)

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 577.

STANDARD PIPE LINE COMPANY, INC.,
PETITIONER,

vs.

MILLER COUNTY HIGHWAY & BRIDGE DISTRICT, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner above named, by its attorneys, respectfully prays the issuance of a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Eighth Circuit, rendered April 18, 1927 (R., 219-225), in which motion for rehearing was denied July 12, 1927 (R., 237).

Summary Statement of the Matter Involved.

1. This action was begun by bill in equity in the District Court of the United States for the Western District of Arkansas, Texarkana Division, May 21, 1924, by the Standard Pipe Line Company, Inc. (under the laws of Louisiana), as plaintiff, against Miller County Highway & Bridge District, as defendant, a corporation created by a special act of the Legislature of Arkansas, No. 153, approved March 5, 1915 (R., 170-185). The bill was filed to cancel an assessment of alleged benefits on account of proposed public roads against 12 miles of pipe line of the plaintiff and its telegraph and telephone wire, $5,000 per mile—in the aggregate, $60,000. The Special Act 153 authorized the building of 60 miles of public highway in the district, and a bridge across Red River, which was the east boundary of the district. Three commissioners were appointed to manage the affairs of the district. The commissioners, by authority of the act, appointed three assessors to assess benefits arising from the proposed improvement against the lands of the district, including railroads, pipe lines, and other utilities.

2. The assessors filed their first assessment of benefits under said Act 153 April 29, 1916 (R., 45). The pipe line at that time was in the name of Prairie Pipe Line Company. Section 7 of Act 153 required the assessors to ascertain the value of the property without said improvement and also the value thereof as benefited by said improvement. The assessors found

the value of said property as $59,340 and benefits $59,340; total, $115,680 (R., 43). The assessment against 71.05 acres owned by the company in the district upon which the pumping plant and tanks were erected was made separately and is not involved in this case. The only question is the assessment against 12 miles of pipe line and one wire used in connection with the company's business, not along the right of way, but from Mandeville to Texarkana, and thence to Index, on poles of the Southwestern Telephone Company, a distance of 17 miles, worth $15 per mile. Under Legislative Act No. 15, approved January 29, 1917 (R., 185-206), the said Legislative Act 153 was superseded and the proposed improvement was changed from 60 miles of highway and bridge to 75 miles of highway. A new assessment was authorized and made of "12 miles pipe line and 12 miles telegraph and telephone lines, $5,000 a mile, or $60,000" (R., 47), and this assessment and that property alone is involved in this case. The property of the district subject to the assessment was not required to be valued under the new Act 15 by the assessors, as it existed before the improvement and as it would be after the improvement, but merely the benefits were assessed.

3. The bill filed in this case attacked the assessment upon the ground that the 12 miles of pipe line and wire were not benefited by the road improvement, measured by the fact that the value of the pipe line and its business and revenues were not increased thereby; that the assessment was made without any

reason or basis, and that it was palpably discriminatory and arbitrary and its enforcement would result in taking petitioner's property without due process of law and deny to it the equal protection of the laws; that the petitioner was engaged solely in transporting crude petroleum in interstate commerce, through its pipe lines, from Oklahoma through Arkansas to the Mississippi River in Louisiana; that it received and transacted no local business in the defendant district, and that the levy of said assessment was an undue burden upon interestate commerce and therefore void.

It was further charged in the bill that the assessment of 12 miles of pipe line and telegraph and telephone line was void, as it did not describe which 12 miles of pipe line of 25.49 miles of pipe line located within the district or which 12 miles of wire of the 17 miles in the district were assessed. The curative Legislative Act No. 83, approved February 14, 1925, attempting to validate the assessment of benefits in the district, was inoperative, in so far as the pipe line is concerned, on account of said misdescription.

4. The case was tried before Hon. F. A. Youmans, United States District Judge for the Western District of Arkansas, and special findings were made sustaining the contentions in the bill, and a decree was rendered July 2, 1925 (R., 31), enjoining the collection of said assessments.

The circuit court of appeals reversed this judgment (Fed. Rep., Vol. 19, 2d edition, page 3; R., 219).

Findings of the District Court.

1. The construction of the highway has not added anything and will add nothing to the value of the property of plaintiff taxed for its construction and maintenance.

2. The construction of the highway of the defendant has not added and will not add anything to the revenue which is obtained by plaintiff by the transportation of oil through its pipe lines.

3. The levy of a tax of $5,000 a mile upon plaintiff's right of way or pipe line and telegraph and telephone wires and lines in Miller County Highway and Bridge District is not laid upon the same plan that is followed with regard to other lands in the district.

4. The said levy of $5,000 a mile is palpably arbitrary.

5. The alleged benefit to plaintiff's property by the construction of the highway is speculative and conjectural.

6. Plaintiff is not estopped from maintaining this suit.

7. The act of the Legislature of Arkansas (passed on the 14th day of February, 1925, long after this suit was instituted) purporting to validate generally the levy of the tax made by the defendant upon the property in the district is not effective to validate the levy upon plaintiff's right of way and pipe line, because, as

to plaintiff's property, such levy is arbitrary (R., 31-32).

Thereupon the court entered a judgment perpetually enjoining and restraining the Miller County Highway and Bridge District from attempting to enforce collection of said assessments (R., 32-33).

The circuit court of appeals reversed this judgment (Fed. Rep., Vol. 19, 2d edition, page 3; R., 219).

Questions Presented and Specifications of Error.

Your petitioner is advised that the circuit court of appeals erred in refusing to affirm each of the foregoing findings of law and fact made by the district court, and erred also in those respects which are fully set out in the specifications of error embodied in the brief supporting this petition, attached hereto, and the Court is respectfully requested to take said findings of law and fact, together with the specifications of error embodied in the brief attached to this petition, as presenting the questions and specifications of error involved in this petition, and that the petition be granted for the reason that the circuit court of appeals did not follow the said findings of law and fact made by the district court, and for the further reasons set out in the said specifications of error in the accompanying brief, and that said specifications of error be here accepted as fully and completely as though copied in full.

A certified copy of the entire record of said case in the said circuit court of appeals is hereby furnished, attached to and made a part of the application, and

marked Exhibit "A," in compliance with Rule 35 of this Honorable Court.

Your petitioner is advised and believes that the said judgment of the United States Circuit Court of Appeals in said case is erroneous, and that this Honorable Court should require the said case to be certified to it for its review and determination in conformity with the provisions of Section 240, Judicial Code.

Reasons for Granting Petition.

This is a case of special and general importance for the following reasons:

1. The Circuit Court of Appeals of the Eighth Circuit, in reversing the judgment of the lower court, decided against appellees the question of the denial to petitioner of the equal protection of the laws and the taking of its property without due process of law, as guaranteed to it and all others by the Constitution, arising from a palpable and arbitrary assessment of alleged benefits against its pipe line and wire of $5,000 per mile, $60,000, in conflict with applicable decisions of this court, towit: Road Improvement District No. 1 of Franklin County, Arkansas, *vs.* Missouri Pacific R. R. Co., decided April 18, 1927 (United States Supreme Court Advance Opinions, May 16, 1927, No. 13, 71 L. Ed., 622; Thomas *vs.* Kansas City Southern R. R. Co., 261 U. S., 758; Gast Realty Company *vs.* Schneider Granite Co., 240 U. S., 55; Kansas City Southern Ry. Co. *vs.* Road Improvement District No. 6, Little River County, Arkansas, 256 U. S., 658-661.

The Court of Appeals erred in the following declaration of law (R., 225):

> "They [the authorities] forbid us to weigh the benefits against the burdens, and require us to hold in the instant case that under all circumstances there was sufficient justification for the legislative determination that appellee's property was benefited."

If benefited at all, the principal benefit would be when pipe would be relaid, not oftener than every 20 years, when the entire item of hauling will not exceed over $375 to $400 per mile (R., 206, at bottom of page). If there was a slight benefit from the use of the roads, it would not justify an assessment of $5,000 per mile, and it should have been corrected, as held in Road Improvement District No. 1, Franklin County, Arkansas, *vs.* Missouri Pacific R. R. Co., *supra,* and if there is no benefit the assessment should have been canceled, as in the cases above cited.

2. The Eighth Circuit was thought by the Judiciary Committee of the American Bar Association at its last session to be large enough for two or three circuits; and, while we do not cite authorities of this circuit as conflicting with the decisions of other districts, we call the court's attention to the conflict existing between the case at bar, as decided by the court of appeals, and the following applicable case, for the court's consideration: Board of Directors of Miller Levee District No. 2, *vs.* Prairie Pipe Line Company, 292 Fed., 474, wherein the benefit against a part of the same pipe line involved

in this case and in the confines of this road district was held void by the District Court, presided over by Hon. F. A. Youmans, and the Court of Appeals of the Eighth Circuit, presided over by Judge Lewis, circuit judge, and Booth and Johnson, district judges, as being problematical and speculative. The six miles of oil pipe line belonging to the Praire Pipe Line Company is a part of the same pipe line involved in this suit, located in Miller County Highway and Bridge District. In that case the Legislature directly authorized the assessment of 6 per cent *ad valorem* upon the assessed valuation of the real estate within the district, and the act included pipe lines within said district. It was shown that the pipe line was assessed for general taxation at more than the reproduction value, whereas improved lands in the district worth $60 to $100 per acre, and unimproved lands, worth $25 to $40 per acre were assessed at $10 per acre and $4.50 per acre, respectively, and at from 10 to 16 per cent of their true value. These are a part of the same lands that are in Miller County Highway and Bridge District. The court said: "That these results were unfair and injurious to the defendant, is in our judgment apparent," and that the adoption of such results was "palpably arbitrary and a plain abuse." That part of the opinion which applies more especially to the present case is as follows:

> "We are further of the opinion that the evidence sustains the conclusion of the trial court that the improvement provided for under the acts creating the Levee District did not benefit

the defendant or its pipe line within the limits of the Levee District. *In our judgment the evidence clearly shows that the improvement did not increase either the value of the pipe line or its earning capacity.* Whether the improvement might possibly in the future decrease the expense of upkeep and repairs was shown by the evidence to depend on so many conjectural and fortuitous circumstances as to render any such benefit purely speculative."

In this case certiorari was denied by the United States Supreme Court, Miller Levee District No. 2 *vs.* Prairie Pipe Line Company, 263 U. S., 718; 68 L. Ed., 523.

And also the following closely allied cases, which conflict with the decision of the court of appeals, in the case at bar:

Thomas, Sheriff, *vs.* Kansas City Southern Ry. Co., 277 Fed., 708.

K. C. Ry. Co. *vs.* May, 2 Fed. (2d), 680.

Kansas City Southern Ry. Co. *vs.* Ogden Levee District, Fed. Rep., Vol. 15, 2d Series, 637, upon the subject of correction by the commissioners or cancellation of palpably arbitrary assessments, and inadequacy of remedy provided by the statute creating the district. The drainage district involved in that case is just across the river from the present district, through which the pipe line also runs.

Thornton *vs.* Road Improvement District No. 1, Clark County, Ark., 291 Fed., 527.

3. The case at bar is a test case, for the purpose of ascertaining the limitations upon assessors who were charged with the duty of assessing benefits in improvement districts through which pipe lines run. At present there are three cases pending in the Federal court at Texarkana, in which the petitioner is plaintiff, against Road Improvement District No. 7, Little River County, defendant, where 14 miles of pipe line are assessed $250 per mile, $3,500; Road Improvement District No. 6, Little River County, Arkansas, 5.5 miles of pipe line are assessed $2,500 per mile, $13,715, and Road Improvement District No. 3, Sevier County, Arkansas, 2 miles, $8,300.

In the present case it is shown that there were two parallel lines running across the district, one laid in 1909 and the other in 1915, before the district was formed, the cost of construction of which was $8,000, or $9,000 per mile. The value of the pipe line laid in 1909, with the usual depreciation of 5 per cent, would be less than $4,500 based on reproduction value, and the other 5 years' depreciation would be $6,000. Twelve miles of pipe line in this case have been assessed $5,000 per mile, which must apply to one or the other of these lines, if the description is subject to correction.

It appears in the case of Kansas City Southern R. R. Co. *vs.* Road Improvement District No. 6, *supra*, that the railroad was assessed $7,000 per mile of the main track, and the pipe line, telegraph and telephone lines were assessed $2,500 and $300 per mile.

In the case of Road Improvement District No. 1, of Franklin County, Arkansas *et al.*, appellants, *vs.* Missouri Pacific R. R. Company, appellee, *supra*, it appears that 24 miles of railroad were assessed at $77,686, or a little over $3,000 per mile, which was confirmed by an Act of the Legislature. The Supreme Court held this assessment was so excessive that it was violative of the due process clause of the Constitution, and the Court held that the assessment should be reduced to not more than $15,000, or about $600 per mile.

It is submitted that since the assessments against the railroads above mentioned were considered by the Supreme Court palpably, arbitrary and discriminatory, and denied to the railroads the due process and equal protection of the laws, that the same rule should be applied to the pipe line in this case, where the assessment is $5,000 per mile.

With reference to railroads, it is shown by these decisions and Thomas *vs.* Kansas City Southern R. R. Co., 261 U. S., 758, that a railroad may be benefited by roads, drains and levees, by opening up new territory and bringing products of the earth and people to the railroad for transportation, and thereby increase their revenues; but as to the pipe lines, in this case, it receives no products for transportation in Arkansas, and does no local business. There are no richer lands anywhere than the Red River bottom lands in this improvement district and in the adjoining Little River County. There are four districts covering the same territory through which the pipe line runs, viz, for

roads, a bridge, a levee and ditches. It can be seen that a benefit which would create these improvements will enrich the owners of the land, but it is different with the pipe line which lies under the earth.

4. Pipe lines are recognized and regulated (and protected from arbitrary official action) as common carriers by Federal laws, engaged in the transportation of an indispensably necessary product in universal use, and they are chargeable with and should perform certain governmental burdens. It is a matter of special interest to the public at large, and to the pipe lines that their obligations should be definitely defined and observed.

No case calls for such definition any stronger than the one now under consideration. It is especially important on account of the diversity of the methods and results of the assessments of benefits against pipe lines in local improvement districts for roads, drains, levees and bridges, especially those located in that part of the country through which the present pipe runs, a decision should be rendered herein correcting the opinion of the court of appeals, which we submit is in conflict with previous decisions of the Supreme Court of the United States and the circuit court of appeals, so that pipe lines may not be set apart, separate and distinct from other taxpayers, subject to the arbitrary and unreasonable action of assessors (who presumably wish to do right) in making their assesments without limitation, rule or guide.

The foregoing considerations and the necessity for uniformity in the decisions in the Circuit Court of Ap-

peals of the Eighth Circuit, which are rendered non-uniform by the case at bar (which can only be accomplished by the harmonizing influence of the Supreme Court) upon a question so important is here presented as a ground for review on certiorari by this Court.

5. The misdescription of 12 miles of pipe line and telegraph and telephone lines arising from the fact that there are two parallel lines, aggregating 25.49 miles of pipe line and 17 miles of wire in the district, was presented as a ground for relief by the bill filed, Section 16, R., 20, and also in the briefs and motion for rehearing, paragraph 9, R., 132, in the court of appeals, but the point was not mentioned in the opinion. This proposition is also presented as a ground for review by certiorari.

6. The assessment of benefits herein of $5,000 per mile against the pipe line on account of alleged benefits will affect the use, value and ownership thereof to that extent that it will be an undue burden upon interstate commerce and the business of transporting crude oil in interstate commerce by said company and will violate the statutes of the United States regulating commerce between the States.

7. Section 1, Act 153, and Section 1 of Act 15, which takes the place of Act 153, endows Miller County Highway & Bridge District with perpetual existence, and it is created not only for the purpose of building roads, but re-building them and keeping them in repair.

Act 83, "An Act in aid of Miller County Highway & Bridge District," see appendix to this brief, as it is not copied in the transcript, approved February 14, 1925, provides in Section 1:

"The Miller County Highway & Bridge District are hereby authorized to pave with concrete, asphalt or other hard surface deemed by them most advantageous, any road of the district heretofore constructed;" and additional benefit assessments are authorized on account thereof.

Section 1 further provides that the "total present assessment of benefits in the aggregate shall never be diminished."

It is then provided in Section 4, Act 83, that "the assessment of the benefits of said Miller County Highway & Bridge District, now on file, and any other assessment of benefits, which it may make, shall bear interest at the rate of 6 per cent per annum."

Therefore the $60,000 assessment against 12 miles of pipe line will be increased annually at the rate of 6 per cent per annum, or $3,600 yearly.

Should the rule of assessment sustained by the court of appeals prevail, then it would be authority for an assessment of more than $240,000, in the aggregate, including the remaining 38 miles in the district not assessed. There have been four acts of the Legislature and each of them adds more power to the commissioners.

Wherefore, it is respectfully submitted that this petition for writ of certiorari to review the said judg-

ment of the United States Circuit Court of Appeals should be granted.

T. M. MILLING,
W. H. ARNOLD,
W. H. ARNOLD, JR.,
DAVID C. ARNOLD,
Counsel for Petitioner.

I hereby certify that I am of counsel for the petitioner named herein, Standard Pipe Line Company, Inc., of Louisiana, and in accordance with the request of the petitioner, the foregoing petition has been prepared; that the allegations contained in said petition are true to the best of my knowledge and belief, and that said petition is not made for the purpose of delay, and is, in my opinion, well founded in law and in fact, and should be granted.

WILLIAM H. ARNOLD.

TEXARKANA, ARK., *September* 12, 1927.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 577.

THE STANDARD PIPE LINE COMPANY, INC.,
PETITIONER,

vs.

MILLER COUNTY HIGHWAY & BRIDGE DISTRICT, RESPONDENT.

BRIEF IN SUPPORT OF PETITION.

The opinion of the court below (R., 219-225) is reported Federal Reporter, Volume 19, 2d edition, page 3. The judgment of the court below, review of which is asked in this proceeding, was rendered April 18, 1927 (R., 225). Motion for rehearing was filed June 6, 1927, and denied July 12, 1927 (R., 237).

The petition invokes the jurisdiction of this Court under the provisions of paragraph (*a*) of Section 240

of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat., 939), providing for the granting by this Court of writs of certiorari to the United States Circuit Court of Appeals.

Statement of the Case.

The value of the pipe line and the amount of its revenues were not increased by the road district. A pipe line is built without regard to the roads, and it has its own road along the right of way, and the roads in this district do not parallel the pipe line. The roads in the district fall within that class receiving Federal aid, under the Act of Congress approved July 11, 1916, Chapter 241, 39 Stat. at Large, 355, entitled, "An act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," under the Federal Highway Act, approved November 9, 1921, amending said Act of Congress above mentioned. One of the roads, No. 67, connects with Highway No. 74 at Little Rock, which extends east to Cape Lookout, N. C., and it is one of the "First Priority Roads," as approved by John J. Pershing, General of the United States Armies, August 23, 1922, and the improved roads in the district constitute a part of the general highway system, which are used in interstate traffic and commerce.

The only evidence of benefit to the pipe line by the roads was such use of them as was necessary for employees to go to their work to patrol the lines, or for hauling pipe and material for reconstruction and repair. As the value of the pipe line and its revenues

were not increased by the roads, the tax cannot be justified by mere evidence of use, and the pipe line company, being engaged in interstate commerce, could not be prevented from using the roads.

Snetzer *vs.* Gregg, 129 Ark., 546.
Buck *vs.* Kuykendall, 267 U. S., 307-317.
Michigan Public Utilities Commission *vs.* Duke, 266 U. S., 570-578.
Bush *vs.* Maloy, 267 U. S., 317-326.

The life of a pipe line is 20 years, and depreciation 5 per cent per annum. The assessment was against 12 miles of the pipe of the 25.49 miles of pipe, consisting of two parallel lines, one laid in 1909 and the other in 1915. The cost of the 1915 line was $8,000, or $9,000 per mile, and the other less. Apply the 5 per cent depreciation to 12 years for the 1909 line and 5 years for the 1915 line, when the 1920 assessment was made, and it will be seen that the depreciation would reduce the lines to not exceeding $5,000 per mile. In other words, the assessment against the pipe line is equal to its value.

The Method of the Assessment in the District.

First. The testimony of Geo. T. Conway, the only witness who testified on this point, is that the acreage, which comprised over 136,000 acres, was laid off into zones; zone 1 included lands within one mile of the road, assessed at $30 per acre; zone 2 included land in two miles of the road, assessed at $25 per acre, and zone 3 included land within 3 miles of the road, as-

sessed at $20 per acre (R., 53). The assessors did not take into consideration the value of the land itself or the dwellings and improvements thereon, but just simply the location. (See last 11 lines of R. 53.) There were plenty of houses throughout the district, and a great part of the land in cultivation. (See first 11 lines at top of page, R. 54.)

Second. As to the lands in the City of Texarkana, the assessors ascertained the assessments for general taxing purposes and fixed the benefit at an amount equal to that assessment (R., 57).

The pipe line was assessed on the benefit plan without any rule or guide (R., 65). At bottom of page 54, and R., top of page 55.

Actual Value of Cleared Lands Worth $100 per Acre and Wood Lands $40 per Acre.

L. C. Adams, witness for the district, and the only witness who testified on the point of value of lands in the district, said that the cleared Red River Bottom lands in cultivation were worth $100 per acre, and that the wood lands were worth $40 per acre (R., 168). These values were increased from $18 per acre (R., 168) by reason of improvement districts, levees, ditches and roads (R., 169).

Of 136,000 acres comprising the district, 96,000 acres were rich bottom lands in Homan Drainage District and Miller Levee District No. 2.

Lands in the District Assessed for Purposes of General Taxation at 10 Cents on the Dollar.

W. J. Paup, witness for the district, and the only witness who testified on the point of assessments for general taxation on the *ad valorem* basis (which is not the benefit assessment involved), testified that the cleared land in the district in 1920 was assessed at $10 per acre, and that the wild lands were assessed at $4.50 per acre; that the average assessment of hill lands and $4.50 per acre for wild lands (R., 159).

He further testified that the lands lying in Miller Levee District No. 2 (about which L. C. Adams testified) had been assessed at $10 per acre for cleared lands, and $4.50 per acre for wild lands (R., 159).

The Method of Assessment for Miller County Highway and Bridge District Fixed by Legislative Acts.

The method required by Section 6 of Special Act 153 says:

The assessors "shall ascertain the value of the real property (which included the pipe line and other utilities) within said district, without said improvement, *and the value thereof as benefited by said improvement, and shall charge against each parcel of real estate (and other utilities)* an assessment according to the benefit that will accrue to it by reason of construction of said highways and bridge." The italicized words are left out of the copy of act, in Section 8, at page 173, but the exact language of the acts will be shown in the appendix.

The last paragraph of Section 8 of Act 153 (R., 175) provides that:

> "All railroads, pipe lines (and other utilities) in any way connected with the realty in said district and the appurtenances in said district shall be assessed *according to the betterments and increase in value* in like manner as herein prescribed for real estate, except that assessment shall be made per mile."

Section 6 of Act 15, approved January 29, 1917, under which the new assessment of July 24, 1920, was made, provides:

> "Future assessments shall show the lands of the district as they appear on the county tax books, with such corrections as may be necessary, and shall also show the railroad, street railway, pipe lines (and other utilities) *by the mile.*"

Then we quote from Section 7 of Act 15, 16th line from bottom, R., 188, "opposite each piece of property shall be placed the name of the owner, if known to the assessor, and the amount of the *betterments.*" Thus, it is apparent that the assessors did not follow the acts, but as between the lands in the city and the lands in the country, the pipe line was singled out to bear a benefit assessment as of its value; while the lands in the city, if the assessment for general taxation prevailed there as in the country, were assessed at one-tenth of their value, as the *ad valorem* for general taxation was adopted as a basis; and the agricultural

lands bore for the special road assessment from one-fifth to one-third of their value.

The Entire Costs of Hauling from Station and Stringing Along the Pipe Line Would Not Have Exceeded $375 to $400 per Mile.

The uncontradicted evidence in this case shows that the first pipe line was laid in 1909 diagonally across the territory which, subsequently, in 1915, formed the Miller County Highway and Bridge District, and another parallel line was laid across the same territory in 1915. These were put down by the Prairie Pipe Line Company, and December 1, 1922, these lines were purchased by the petitioner herein, the Standard Pipe Line Company, Incorporated, of Louisiana (R., 91).

The testimony of Mr. R. A. McGrew, who is engineer and vice-president of said company, is not contradicted that the cost of the reconstruction of the line (when prices were high) in 1920 would be $11,500 (R., 91), and in 1915, when the second pipe line was laid, $8,000 or $9,000, and in 1909, when the first pipe line was laid, considerably less (R., 91).

It is further uncontradicted that these were the only pipe lines owned by the petitioner in said district when the assessment of 1916 and 1920 were made under said Acts 153 and 15.

The uncontradicted testimony of Mr. W. B. Fulton, the engineer of the petitioner, is that these two lines of pipe aggregated 25.49 miles, when each assessment, 1916 and 1920, was made (R., 73).

The testimony of Mr. Conway, the principal assessor, intimated that he did not know that there was but one pipe line in the district, and that it was assessed as being twelve miles in length (R., 54).

The only effort on the part of the Highway District to show benefits to the pipe lines by reason of the use of the road in hauling pipe and materials to the right-of-way of the pipe line company or to the nearest points to the pipe line, but this hauling was not for the benefit of the two pipe lines in existence when these assessments were made. The assessors did not undertake to make the assessment on the ground that other pipe lines would be laid.

It is shown that in 1923 (see Fulton's testimony, R., 77-78) two other pipe lines were laid parallel with the first two, and according to the testimony of Mr. McGrew, the costs of the entire hauling from the railroad to the pipe line and the distribution thereof along the pipe line would not be more than 4 per cent of the cost of the pipe line. None of these roads of this district was used when the pipe was laid in 1909 and 1915, and the use of the roads occurred in 1923, three years after the last assessment was made when the two additional pipe lines were laid; and if the entire cost of hauling and laying the pipe line should be treated as benefits received from the road, it could not exceed more than the estimate of Mr. McGrew, $375 or $400 per mile (R., 206-7). The uncontradicted evidence is that the value of the pipe line was not increased by the road (R., 88).

This was so found by trial court, and it is submitted that the evidence does not sustain the court of appeals in reversing the judgment.

Map of District. R. 210-211.

Miller County Highway & Bridge District is agricultural, containing 136,322 acres, within which is located what is known as Miller Levee District No. 2, consisting of about 90,000 acres of rich bottom lands, and Homan Drainage District consisting of about 6,000 acres of rich bottom lands. The southwestern part of the district consists of agricultural hill lands. The District is bounded on the west by a line beginning three miles south of Texarkana, running north to State Line between Arkansas and Texas and parallel to the Kansas City Southern Railway to Index, a distance of thirteen miles; thence northeasterly with the meanderings of Red River to Fulton, a distance of fifteen miles; thence southeasterly with the meanderings of the river, fourteen miles; thence west to the place of beginning. This territory embraces nearly the north one-half of Miller County. The City of Texarkana is located on the State line, consisting of a population of 8,259 in Arkansas, and 11,840 in Texas. (Census, 1920.)

The Property of the Standard Pipe Line Company, Inc., in Miller County Highway & Bridge District.

At the time the first assessment was filed, April 29, 1916 (R., 45), and also when the second assessment was filed, July 24, 1920 (R., 51), the Prairie Pipe Line Company owned two separate tracts of land, assessed

separately, 40 acres and 31.5 acres, located at Mandeville, a station (unincorporated) on the St. Louis, Iron Mountain & Southern Railway, upon which is located the pumps, plant and tanks of said company. The assessment against the land and improvements thereon is not in controversy in this case.

The said Prairie Pipe Line Company, at the time said assessments were made, owned two district pipe lines in the district buried in the ground about twenty inches, entering the district at a point near Index (station on the Kansas City Southern Railway and also on the river), and running in a southeasterly direction through the district to a point where it leaves the district six miles east of Texarkana. These lines are practically parallel, and aggregate 25.41 miles in length. As to telephone poles, there were none, and as to wire, there was a single wire running from Mandeville to Texarkana thence to Index, a distance of 17 miles, worth $15 per mile. Said pipe lines are crossed by the gravel roads in four different places in the district, almost at right angles.

Accessible to Railroads for Shipment of Pipe and Materials.

The railroads in the district are the Kansas City Southern Railway, running along State line between Arkansas and Texas, from Texarkana parallel with a gravel road to Index, a distance of ten miles, and there is a railroad station (Whatley) at a point midway between Texarkana and Index, and also another at a point north of Index, two or three miles (Ogden).

The St. Louis, Iron Mountain & Southern Railway, running through the district, from Texarkana to Fulton, parallels one of the gravel roads. The St. Louis Southwestern Railway runs from Texarkana through a part of said district, in a southeasterly direction, a distance of four miles; thence it runs in a southerly direction to Garland City. It can be seen, therefore, that at no point accessible to a road is a pipe line within a greater distance of some loading or unloading point of the railroad than two or three miles. There are unloading railroad stations (Genoa) on the St. Louis Southwestern; Mandeville, Texarkana and Paup Spur on the St. Louis Iron Mountain; and Texarkana, Whatley, Index and Ogden on the Kansas City Southern.

The Cost of Hauling Only 4 Per Cent of the Entire Construction.

There is a wagon road constructed and maintained by the pipe line company along and over its pipe line right of way. Hence, the only hauling that could be done upon the public road was from the point where the pipe could be unloaded at one of these stations, to a place where it could be deposited and later loaded on wagons and hauled upon the right of way of the pipe line. The cost of the entire hauling from the railroad to the place where it was to be deposited in the trench in case of reconstruction of the pipe line, or the construction of a new line, is only four per cent (4%) of the entire cost of the construction of the pipe line, $375 to $400 per mile, while the entire reproduc-

tion cost would amount to about $11,000 per mile (R., 206-207).

Benefits to Pipe Line Problematical and Speculative.

The pipe line is peculiarly advantaged by its location with reference to the railroads and unloading stations, and its own road built along the pipe line for the purpose of access and distribution. The pipe lines assessed were laid in the ground 1909 and 1915 and there have been no major repairs. (Fulton, R., 74; McGrew, R., 92.) The pipe line is constructed of joints of rolled steel of the average length, of 21 feet, and are connected up with what pipe line men term collars, and they are screwed into these collars. These collars occasionally will leak. A line walker has his calking tools along, and calks these joints. The expense of upkeep has not been less than it was before the roads were built (R., 74-75). The pipe line keeps only one auto in the district (R., 89). There was a piece of one of these lines near the river removed for the purpose of paralleling it with the other line, and new pipe was substituted in place of that part of the line removed (R., 92). Previous to building the gravel roads, there were roads (R., 146, 148, 149). The engineer of the district testified that no special consideration of advantage or benefit was given to the pipe line in building these new roads (R., 149).

In 1923 the pipe line company constructed two other pipe lines, parallel with the two purchased from the Prairie Pipe Line Company. These were laid in 1923, three years after the last assessment was made (R.,

77). Some of the pipe was hauled from the railroad stations, principally Paup Spur, including railroad stations, along the improved roads (which had taken the place of the dirt roads) and a full load carried on the improved road upon the pipe line road along the pipe line; and where a full load was taken from the station, it would have to be unloaded in order to unload it before getting to the pipe line road, and often in hauling from the station over the road the wagons only took such number of pipes as could be hauled along the pipe line road, thus avoiding the necessity of throwing off part of the load (R., 155). It was shown that the roads did not parallel the pipe lines, and no full load could be hauled along the improved road to the pipe line, except at the crossings. There was an unloading place between Paup Spur and Index where some of the truck loads were discharged, and then it was necessary to reload the pipe on wagons and haul the same to the pipe line and along the pipe line. The cost of handling the pipe line in loading and reloading minimized if it did not entirely take away the advantage of the limited use of the public road in hauling the pipe.

But no part of this hauling in 1923 applied to those two pipe lines owned by this company in 1920, against which the assessment alone can apply, if at all.

In the opinion of the circuit court of appeals it is said: "Other witnesses testified that on the occasion of a fire at appellee's pumping station, the fire department, at its request, arrived in time to be of material assistance; that without good roads they would not

have attempted to run the risk of danger to equipment and danger to the lives of the firemen that would have resulted." The only evidence in regard to this is that of W. J. Springer, Chief of Fire Department (R., 100 to 104), who testified that one day last week (April 21, 1925) the fire department made a run to Mandeville, a distance of 6 miles, for the purpose of putting out a conflagration at the pumping plant of the Standard Pipe Line Company, Inc.

> "Q. As a result of that, was the fire extinguished so that no heavy damage occurred?
>
> "A. No, sir; the fire was not extinguished (R., 101). It burned out, so I understand, about 11:30. We put a pump to work until the gate house boiled over, or rather the oil came back, boiled over and ran down the pit inside of the pump house, then we quit pumping water, and the only thing that was done then, we replaced a door in the side of the main engine room, a fire door which had burned and flooded that room. There was some ditching done and dikes thrown up. That was done by the company's man." (R., 101).

This apparently is the only occasion in the history of the fire department where it attempted to put out a fire for the Standard Pipe Line Company, Inc.

But it is submitted that this benefit, if it was done, can not be charged to the pipe line itself, the assessment of which alone is involved in this case. The assessed benefits against the lands, which include pumping plant and the tanks where the fire was, are not

questioned. The assessments against the lands have been regularly paid and are not involved in any way in this case.

In the opinion of the United States Circuit Court of Appeals, page 220, in 14th line from top, "it (the pipe line company) does no business within the district other than maintain and operate its pipe line as part of an interstate system." And in 18th line from top of page (R. 221) the court says: "It obtains all its oil in Texas or Oklahoma, and conveys it through Arkansas to a terminus in Louisiana, nor does it have any revenue from any source within the State." There is no evidence that any of the oil is obtained in Texas.

In the third paragraph (R., 221) the court said:

> "These and other witnesses called by *appellee* testified, however, that when they put in two additional lines they used the new roads for hauling pipe and unloading it adjacent to the right of way; *that the new roads resulted in great economies in time and cost*, both in laying and repairing the line and in affording access to the same."

No witness for appellee testified to this statement.

The court said in the second paragraph, page 225:

> "The assessment here is what is denominated as a general improvement tax, laid against the real property owned by appellee within the district on an *ad valorem* basis."

This statement is not sustained by any evidence.

Specifications of Error.

Substantially the same assignments of error herein were presented in motion for rehearing and by brief to the court of appeals (no assignments of error having been made originally by appellee in the court of appeals, since your petitioner was appellee in that court; see petition for rehearing, R., 227-236).

1. The circuit court of appeals erred in its failure to sustain each of the findings of law and fact, as made by the district court, as copied in the petition for writ of certiorari (R., 31).

2. The circuit court of appeals erred in its failure to hold, as did the lower court, that the levy of $5,000 per mile upon plaintiff's pipe line and telegraph and telephone wires was palpably arbitrary; added nothing to the value of petitioner's property; added nothing to petitioner's revenue; alleged benefits were speculative and conjectural; that said levy was not upon the plan followed with regard to other lands in the district; that the attempted confirmation and ratification of the assessment of benefits by Legislative Acts 15 and 83 was invalid for non-description of the property involved; that said description rendered the assessment invalid; that the said assessment was so arbitrary and discriminatory that it denied to the petitioner the due process and equal protection of the provisions of the Constitution of the United States, and that said assessment was void, as being an undue burden upon peti-

tioner's business, which is that of transporting oil in interstate commerce (motion for rehearing 19, R., 235).

3. It is submitted that the result of this case in the court of appeals was probably controlled by misunderstanding of the facts, as shown by the following statement in the opinion of the court (beginning 20th line from top, R., 225) which is here assigned as error:

> "The assessment here is what is denominated as a general improvement tax, against the real property owned by appellee within the district, on an *ad valorem* basis."

This was argued in the brief for rehearing in the court of appeals.

3. The court of appeals erred in failing to hold that the alleged assessment of benefits did not describe any property belonging to petitioner so that it could be identified and found, and such assessment was therefore void and inoperative. This assignment is directed to the evidence that there were two parallel pipe lines in the district belonging to the petitioner, aggregating 25.49 miles, and that the right of way was not assessed, and that both pipe lines could not have been assessed under the description of 12 miles of pipe line, nor could 17 miles of wire be included within 12 miles. (Motion for rehearing, No. 10, R., 232.)

4. The court of appeals erred in not holding that the assessment of benefits against the pipe, telegraph and telephone line without any basis or rule at $5,000

per mile was a constructive fraud upon the rights of the petitioner, and that the assessment should be set aside and cancelled. (Motion for rehearing, No. 11, R., 232.)

5. The court erred in not finding that the plaintiff is not chargeable with $5,000 per mile of its pipe line, upon the ground merely that it had to transport its pipe over part of the public road at a time when new pipe lines were being laid in 1923, and in not holding that the sustaining of the assessment by reason of the fact that said roads were so used would be a tax upon plaintiff's business, and not an assessment that could be justified by the facts for a local road improvement. (Motion for rehearing, 14, R., 234.)

6. The court erred in not holding that the alleged assessment of benefits was a burden upon the interstate commerce in which the plaintiff was solely engaged from the time said pipe lines were constructed and laid. (Motion for rehearing 16, R., 234.)

7. The circuit court of appeals erred in failing to hold that plaintiff (the petitioner herein) was not estopped to have relief by virtue of its bill in equity, on account of the failure of the Prairie Pipe Line Company to avail itself of the administrative remedy provided by Section 7 of Act 153, creating said district, for the purpose of submitting and having corrected any complaint or objection it had to the said assessment of benefits.

8. The court of appeals erred in failing to hold that your petitioner is estopped to prosecute the bill in

equity filed in this cause, because the Prairie Pipe Line Company paid three years' taxes under the original assessment, and failed to appear before the assessors or commissioners for the purpose of having the assessment corrected in the time and in the manner prescribed by Section 6 of Act 15.

9. The court of appeals erred in holding that the petitioner has been estopped by any action of the Prairie Pipe Line Company or any other account from prosecuting said bill in equity.

10. The circuit court of appeals erred in considering the evidence that the Standard Pipe Line Company, Inc., hauled joints of pipe, materials and men over the improved roads in the construction of new pipes in 1923, as evidence of benefits to sustain either of the assessments of 1916 or 1920 against two pipe lines, one of which was laid in 1909 and the other 1915.

11. The court of appeals erred in considering any evidence of the use of the public roads by the Standard Pipe Line Company, Inc., in carrying on its business of maintaining and operating the said pipe lines, which it owns and against which assessments have been laid.

12. The court of appeals erred in considering as evidence of benefit against said pipe lines, the circumstance of the Fire Department making a run to Mandeville over the public road with the city fire equipment for the purpose of aiding the subjugation of a fire, located on a tract on which the assessments are regularly paid and which are not involved in this case.

13. The court of appeals erred in making the following statement and applying the same as material in the consideration of this case, beginning 4th line, R., 220: "Full right of appeal from the action of the assessors was given to the commission and thence to the county court."

This and assignment No. 7 is directed to the fact that in 1920 a new assessment was made to take the place of the one herein; Section 7 of Act 153 allowed an appeal to the county court from the action of the commissioners, and to the further fact that the Arkansas Supreme Court holds that such an appeal would be ineffectual, as without jurisdiction to entertain the same.

14. The court of appeals erred in that part of its opinion, in the following statement, beginning seventh line from bottom of R., 219: "Under a third act relating to this district, being No. 83 of the year 1925, the Legislature declared that the assessment of benefits made by the district to be just, equitable and proportionate *and ratified the same.*" This assignment is directed to the proposition that the Legislature could not cure the assessment by reason of the fact that the particular 12 miles of pipe line intended was not identified by the assessment.

15. The court of appeals erred in its declaration of law in the opinion as follows (Motion for rehearing, 8, R., 231-2): "They (the authorities which had previously been quoted) forbid us to weigh the *benefits* against the burdens, and require us to hold in the

instant case that under all circumstances there was sufficient justification for the legislative determination that appellee's property was benefited."

16. The circuit court of appeals erred in not sustaining the decision of the lower court, in view of the finding of the court of appeals, as follows, beginning with the ninth line from bottom of page R., 222: "It may be observed that the procedure by which the value of the particular property of appellee was arrived at and the *amount of the benefits* determined does not commend itself to us as altogether fair, nor is the tax imposed against appellee *entirely equitable* as between it and *other property owners* of the district."

17. The court of appeals erred in considering as material in this case that part of the opinion, beginning in 13th line, R., 222, as follows: "Their predecessor in title, the Prairie Pipe Line Company, paid three or four installments of these taxes without protest." There is estoppel even without considering the general re-assessment. See opinion by Kenyon, Circuit Judge, Kansas City Southern Ry. Co. *vs.* Ogden Levee District; also opinion by Booth, Board of Directors of Miller Levee District No. 2 *vs.* Prairie Pipe Line Company, 292 Fed., 474; also upon the questions of estoppel herein asserted.

18. The court of appeals erred in holding that the pipe line of the Standard Pipe Line Company, Inc., is real property and property included in the district for the same reason that rights of way of railroad companies are included. The said pipe lines are assessed

as personal property in Arkansas, under Sections 9976 *et seq.* of Crawford & Moses Digest, Statutes of Arkansas, 1921, and attention is directed particularly to Subdivision 4 of Section 9979, of Crawford & Moses Digest, which is as follows:

> (4) "In case of any pipe line company the commission shall take the same proportion of the aggregate value of the entire property within and without this state as determined by this act of such corporation as the number of miles employed in the state bears to the total number of miles employed by such company, the assessment herein provided for shall include the office fixtures, teams, wagons, and other apparatus of said companies."

19. Benefits against lands were assessed with reference to their location only (R., 53), and the houses and improvements on lands and the value of lands were disregarded by the assessors (R., 54). The pipe line is located on leased lands, nine one-hundredths (9/100) of an acre per mile. It was a discrimination to assess the pipe line and omit the benefits to houses, improvements on the lands of the district.

ARGUMENT.

I.

Erroneous Finding of Fact by Circuit Court of Appeals With Reference to the Assessment.

Beginning with the 19th line, R., 225, the court of appeals said: "The assessment here is what is denominated as a general improvement tax laid against the real property owned by appellee in the district on an *ad valorem* basis."

Section 7 of Act 153 (R., 174), and Section 6 of Act 15 (R., 188), requires the assessors to assess the lands and utilities in the district according to benefits; nothing is said about *ad valorem* tax for general taxation. The only witness who testified upon this proposition as to how they reached the assessment was Geo. T. Conway. He testified that the lands of the district were divided into zones, 1, 2 and 3, and the lands were assessed without regard to improvement, clearing or value, at $30, $25, and $20 per acre, according to location. That they did not take into consideration any improvements, although this was an agricultural district, having plenty of houses upon the farms. As to the pipe line, occupying 9 100th of an acre per mile, they assessed it at $5,000 per mile; in other words, this small strip of land is assessed for the improvement thereon, which meets the finding of the court that the pipe line was not assessed as to the other property.

The only consideration given to *ad valorem* tax was that as applied to the lots in the City of Texarkana.

The assessors found the *ad valorem* assessments for the town property and added an equal amount for benefits, but they had no authority to do that from the acts creating the district and authorizing the assessment.

Assuming that the assessment for general taxation was uniform throughout the district, it will be seen from the testimony of L. C. Adams (R., 165-166) that property was assessed for general taxation at one-tenth of the value. (See his testimony.) That the rich lands in Miller Levee District No. 2 (which included 90,000 acres of the 136,000 of the whole district) were worth $100 per acre where cleared and in cultivation, and the woods lands were worth $40 per acre. It was assessed, according to the testimony of Paup (R., 158), at $10 per acre and $4.50 per acre, and the lands and hills were assessed from $4.50 to $6.00 per acre.

It is submitted that the assessment against the pipe line bore the interpretation of the district court in its findings. It was not laid upon the same plan that was followed with regard to other lands in the district, and that it was palpably arbitrary.

The assessors in fact had no rule by which the pipe line was assessed. The court of appeals evidently misunderstood the facts in the case or the above declaration would not have been made.

II.

The Case of Road Improvement District No. 1, of Franklin County, Arkansas, vs. Missouri Pacific R. R. Co., Decided April 18, 1927, United States Supreme Court Advance Opinions, May 16, 1927, No. 13, 71 L. Ed., 622.

In the above case, $75,686 was assessed against 24 miles of railroad, in behalf of a road district. The suit was brought to annul the assessment of benefits, and "while the suit was pending, the State legislature confirmed the assessments specifically, including that against the railroad, and authorized additional assessments, to be made conformably to the first act, to meet the cost of the proposed changes in the width of the road bed and in other features of the improvement." Both the district court (through Honorable F. A. Youmans, Judge of the Western District of Arkansas, who tried the case at bar) and United States Circuit Court of Appeals, Eighth Circuit, held that the assessments were plainly arbitrary, unreasonable, discriminatory and in violation of the due process and equal protection clauses of the Fourteenth Amendment. There was much evidence introduced to proved that the railroad was benefited, and the supreme court in modifying the decision below, held that there was evidence to show that the railroad was benefited, but not beyond $15,000. The court then said:

> "Our conclusion is that the assessment against the railroad is unreasonably discriminatory insofar as it is based on personal prop-

> erty, and in this respect violates the equal protection clause of the Fourteenth Amendment; *and that it is otherwise so excessive as to be a manifestly arbitrary exaction, and in violation of the due process of law clause of the same amendment.*"

In these respects the finding and holding below are well grounded.

The opinion in the case at bar was filed in the court of appeals on the same day, April 18, 1927, that the foregoing decision was rendered by the supreme court, speaking through Mr. Justice Van Devanter, and it conflicts with the latter decision and is therefore erroneous, in this, that the court of appeals felt bound to sustain the assessment, if there was any benefit at all, in the use of the following language:

> "The tendency of these very late authorities is to greatly narrow the constitutional grounds of objection to assessments of this character. They forbid us to weight the benefits against the burdens and require us to hold in the instant case that under all circumstances there was sufficient jurisdiction for the legislative determination that appellee's property was benefited" (R., 225).

It is submitted that the authorities set out in said opinion, just preceding said quotation, Kansas City Southern R. R. Co. *vs.* Road Improvement District No. 6, 256 U. S., 658; Miller Levee District No. 2 *vs.* Prairie Pipe Line Company, 292 Fed., 474, and Myles Salt Co. *vs.* Iberia Drainage District, 239 U. S., 478; Thornton

vs. Road Improvement District No. 1, Clark County, Ark., 291 Fed., 527, hold a contrary view to that expressed by the court of appeals.

The decision of the court of appeals also conflicts with the decision of Thomas *vs.* Kansas City Southern Ry. Co., 277 Fed., 708, affirmed by Supreme Court, 261 U. S., 481. The facts in that case show that there was some benefit arising from the improvement but the assessment was so excessive that it could not be sustained, although it had legislative sanction.

The Assessment May be Extended from $60,000 to $240,000.

The legislative acts governing the present road district authorized the assessors to assess benefits annually; but by the third paragraph of section 1 of Legislative Act 83, approved February 14, 1925, not copied in the record, appearing in appendix to this brief, the total assessment of benefits in the aggregate shall *never be diminished;* and by section 4 of said act, the assessment of *benefits shall bear interest at the rate of 6 per cent per annum.*

This suit applies to cancellation of assessment against 12 miles of pipe and wire, which is unidentified of 25.49 miles, which were in existence in 1920, when the present assessment was made. Two independent separate lines have been laid upon the right-of-way since that time, and therefore if this assessment as to 12 miles should be sustained, it would be authority for extending assessments to include the new lines, which in the aggregate would be in excess of $240,000, besides the interest authorized to be assessed annually.

By section 1 of said Act 83, above mentioned, the commissioners are authorized to pave with *concrete, asphalt or other hard surface,* deemed by them most advantageous, any road in the district heretofore constructed, which they find will require such hard surface.

The circuit court of appeals was in error in reaching the conclusion that no relief could be awarded in this case, in the following language (beginning with ninth line from the bottom):

> "It may be observed that the procedure by which the value of the particular property of the appellee was arrived at, and the amount of the benefits determined, *does not commend itself to us as altogether fair, nor is the tax imposed against appellee entirely equitable as between it and other property owners in the district;* but this standing alone is not decisive of the question."

This, we submit, is in conflict with the following excerpt from the opinion of Gast Realty Co. *vs.* Schneider Granite Co., 240 U. S., 55; 60 L. Ed., 526, as follows:

> "If the law is of such a character that there is no reasonable presumption that substantial justice will be done, but the probability is that the parties will be taxed disproportionately to each other and to the benefit conferred, the law can not stand against the complaint of one so taxed in fact."
>
> Martin *vs.* District of Columbia, 205 U. S., 135.

And in the case of Thomas *vs.* Kansas City Southern Ry. Co., 277 Fed., 708 (affirmed by the Supreme Court in 261 U. S., 481), the court said:

> "In view of what has been said above, it is clear that appellees are benefited; but this does not preclude them from claiming that the amount or relative proportion of the assessment made is void."

III.

The Case of Thomas vs. Kansas City Southern Railway Co., 261 U. S., 481.

In this case the Legislature of Arkansas created, by special law, the Little River Drainage and Levee District of Sevier County, Arkansas, No. 1, and the act creating the district authorized an annual assessment of 6 per cent of the assessed value (for general taxation) of the property within the district. The Court, speaking through Mr. Justice Brandeis, in holding that the assessment which resulted in charging 57 per cent of the burden upon the railroad and 43 per cent upon the 12,000 acres of land, one-tenth of which was in cultivation, was palpably arbitrary and discriminatory, said:

> "The railroad will derive some measure of indirect benefit, because the drained land would doubtless be cultivated, and more extensive cultivation would probably increase traffic over the line."

And the injunction which had been issued against the assessment by Hon. F. A. Youmans, Judge of the

District Court for the Western District of Arkansas, who tried the case at bar (sustained by the United States Circuit Court of Appeals, Eighth Circuit, 277 Fed., 708), was affirmed.

IV.

The Case of Kansas City Southern Railway Co. vs. Road Improvement District No. 6, Little River County, Ark., 256 U. S., 658-661; 65 L. ed., 1151.

In the above case it appears that in levying assessment of benefits upon the railroad track, that the assessors disregarded both area and position, and undertook to estimate benefits without disclosing any basis therefor. As to farm lands and town lots, the assessments were made wholly without regard to their value, improvements thereon, or their present or prospective use. The farm lands were divided into zones and were assessed accordingly by the acre, and the town lots were assessed without reference to value or improvements, according to location. The court held that the railroad company had not been treated like individual owners, and that the discrimination against the railroad was so palpable and arbitrary that it amounted to a denial of the equal protection of the law. Benefits were extended against 9.7 miles of railroad track, $67,900.

In the case at bar, Legislative Act 153, creating the district, in Section 7, 13th line from top of page, R., 174, and Section 8, seventh line from top of page, R., 176, and Act 15, which was a re-enactment of the whole subject; Section 6, 12th line from top of page, R., 188,

and 17th line from bottom of page, R., 188, required all lands in the district to be assessed according to benefits, including pipe lines and other utilities, by the mile. The assessors divided and assessed the lands according to zones; Zone 1, within one mile of the road, $30 per acre; zone 2, within 2 miles of the road, $25 per acre, and zone 3, within 3 miles of the road, $20 per acre (R., 53), but wholly disregarded the value of land by the acre and the improvements thereon, and as to city property the *ad valorem* assessment for general taxation was taken and an equal amount assessed for benefits against such property. It is shown that the assessments for general taxation in Miller County are one-tenth of the value of the property (Adams on cross-examination, R., 168-169; Paup, 158-159). As to the pipe line and wire, benefits were assessed at $5,000 per mile, or $60,000, without any apparent reason or basis. (See second assessment, R., 57.) Telegraph and telephone lines were assessed $200 and $250 per mile, respectively (R., 4).

Practically the same plan was pursued by the assessors in the case at bar as in Kansas City Southern R. R. Co. *vs.* Road Improvement District No. 6, *supra*, which the United States Supreme Court, speaking through Mr. Justice McReynolds, condemned and set aside as palpably arbitrary and discriminatory.

In view of this decision the district court made findings as follows:

Findings of the District Court.

In the case at bar the United States District Court for the Western District of Arkansas, on the same

facts held: (1 and 2) That the construction of the highway has not added anything, and will not add anything, to the value or revenue of the pipe line; (3) that the levy of a tax of $5,000 a mile upon plaintiff's pipe line is not laid upon the same plan that is followed with regard to the other lands in the district; (4) that the levy of $5,000 a mile is palpably arbitrary; (5) that the alleged benefits to plaintiff's property by construction of the highway is speculative and conjectural; (6) plaintiff is not estopped from maintaining this suit; the act of the legislature purporting to validate generally the levy of the tax made by the defendant upon the property in the district is not effective to validate the levy upon plaintiff's pipe line, because as to plaintiff's property such levy is arbitrary. #31-32.

We respectfully submit that the reversal of each of these findings was error and based on a clear misapprehension of the facts.

Act No. 83, approved February 14, 1925, in Aid of Miller County Highway and Bridge District.

Attempted Confirmation of Assessment.

The United States Circuit Court of Appeals, in the case at bar, referred to the above act in the following language: "Under a third act, relating to this district, being number 83 of the year 1925, the legislature declared that the assessments for benefits made by the district to be just, equitable and proportionate, and ratified the same" (R., 219).

The contention of the petitioner, appellee in the lower court, was that the assessment of 12 miles of

pipe line against the Prairie Pipe Line Company (from which the Standard Pipe Line Company, Inc., petitioner herein, purchased December 1, 1922) was void for misdescription. The uncontradicted evidence shows one pipe line was laid in this territory 1909, another distinct line paralleling it, 1915, and that the aggregate length of these two lines in the district was 25.49 miles (R., 73).

This description, we submit, was not sufficient to put the owner of these lines upon notice or to require them to appear before the board for the purpose of correcting the assessment. It would appear that this subject is somewhat similar to misdescription for lands for general taxation, and while the lien may exist, yet without correction or some kind of proceeding, the taxpayer would not be subjected to the penalties or loss of his property for failure to pay the tax. A purchaser at a foreclosure sale under this description would be at sea in asserting his claim to any part of either pipe line, unless in that suit the court should reform the description so that a particular part of the property involved could be subjected to the lien. It has not been claimed, and cannot be, that the omission to appear before the board of assessors was willful or contumacious, but for the simple reason, as elsewhere shown, that the officers of the company had absolutely no notice of either of these assessments until after the time for appearing had expired. We, therefore, have this to say, that if these pipe lines were benefited, there can be no doubt of the right to re-assessment under

Section 6 of Act 15, as amended by said Act 83 of the year 1925.

But it is submitted that the attempt of the Legislature, under Act 83, to confirm an assessment void by reason of misdescription, is ineffectual and can add nothing to it, and should not stand as a bar to bill in equity to remove the cloud from the title of the petitioner.

V.

There Were Two Distinct Pipe Lines In the District When Assessment Was Made, Aggregating 25.49 Miles In Length. The Assessment Was Against Twelve Miles. This So Indefinite As To Be Void and Incapable Of Being Cured By the Legislative Act.

A very clear summary of the decisions of the Arkansas Supreme Court is contained in Woodall *vs.* Edwards, 83 Ark., 337, with references to insufficiency of description in tax proceedings.

In that case Hill, Chief Justice, said (omitting quotation marks):

> This case was tried on an agreed statement of facts, which will be set out by the reporter. The tax title of the appellant was held void, and further that it *was not color of tax title* enabling the *statute of two years' possession under a tax sale to be effective.* And that is the sole question on appeal.

The description in the deed is as follows: "Part N. E. ¼, Sec. 30, T. 9 N., R. 9 E., containing 70 acres."

This description followed the description in the assessment.

In Hershey *v.* Thompson, 50 Ark., 484, it was decided that a description as follows: "Part of the S. E. ¼ of Sec. 15 in T. 8 N. and in range 32 W.," was void, in that it failed to identify the part assessed from other lots or tracts as required by the statute, and that in fact it was no description.

In Schattler *v.* Cassinelli, 56 Ark., 172, this description was considered: "E. part of N. ½ of S. E. ¼ of S. E. ¼" of section containing 7.54 acres, and the court said:

> "A description which can be understood and *made definite only by judicial construction does not accomplish the essential functions* of a description in *tax proceedings;* and, as the law requires one to be made for the practical purpose of protecting the owner, any that conveys no certain meaning to persons ordinarily versed as to such matters does not answer the requirement."

In Cooper *vs.* Lee, 59 Ark., 460, a description of "the N. N. E.," of a section containing 87.19 acres in a tax sale was held void, and the court approved Judge Cooley's statement of the purpose of the description of lands in tax proceedings; "First, that the owner may have information of the claim made upon him or his property; second, *that the public,* in case the tax is not paid, *may be notified what land is to be offered* for sale for the nonpayment; and, third, that the pur-

chaser may be able to obtain a *sufficient conveyance.*" The court said:

> "A description which is intelligible only to persons possessing more than average intelligence, or the use and understanding of which is confined to the locality in which the land lies, is not sufficient."

In Rhodes *vs.* Covington, 69 Ark., 357, the court held that this description, "L. B. R. W. Pt. southwest quarter of section 30, township 5 north, range 4 west," was void, even assuming that "L. B. R." meant the left bank of the river on which the land was situated, as it was vitiated by the terms "W. Pt." which left an indefinite quantity.

In Dickinson *vs.* Ark. Imp. Co., 77 Ark., 570, the decription in question was as follows, "Part East ½ N. E. ¼ Sec. 32 T. 12 S. R. 1 W., 55 acres," and the court said that the *two year statute of limitations* did not run under a deed containing *such description* because "a deed failing to describe the land is equivalent to no deed at all. In order to put this statute in operation, the adverse holding must be under a deed purporting to convey the land pursuant to a tax sale. The deed under which appellants claim to have held *does not purport to convey the title to any land,* because none is described therein.

In Buckner *vs.* Sugg, 79 Ark., 442, the Court said:

> "It is well settled, not only by the decisions of this court, but by the adjudged cases in the courts of other States, as far as we can discover, that, in order to make a *valid assessment and*

sale of land for taxes, the land must be described with certainty upon the *assessment rolls* and in all subsequent proceedings for the enforcement of payment of tax. The chief reason for this requirement is that the *owner may have information of the charge upon his property.* It has sometimes been said that *a description that would be sufficient in a conveyance between individuals* would generally be sufficient *in assessments for taxation.* We do not, however, consider that the safe test. The description in tax proceedings must be such as will fully apprise the owner, without recourse to the superior knowledge peculiar to him as owner, that the *particular tract* of his land *is sought to be charged with a tax lien.* It must be such as will notify the *public* what *lands* are to be offered for sale in case the tax be *not paid.*

"The two-year statute is the shortest limitation statute barring recovery of land. It applies to void tax sales as well as valid ones, yet it must not be extended to deeds void for uncertainty in description of the land conveyed. Such a deed can not aid or explain possession, for it lacks an identification of any land. *Neither the owner nor the public were bound to take knowledge of any tax proceedings against land so described* and the title alleged to be conveyed by such deed, and *hence possession under it* would confer *nothing more* than possession without any deed, and it would require seven years of adverse possession of the land to give title."

The foregoing summary just quoted from Woodall *vs.* Edwards, 83 Ark., 334, is abundantly sustained by the following subsequent authorities:

A tax deed which describes the land sold for taxation as part of a certain forty-acre tract is void on its face.

Penix *vs.* Rice, 93 Ark., 176, 124 S. W., 747.
Morris *vs.* Eagle, 94 Ark., 180.

Where the lands sold for delinquent taxes was described in the tax proceedings and in the deed to the purchaser as "W. pt. S. E. S. E. 20-20-33, 7.60 acres," such description was insufficient, and the sale void therefor.

Hewett *vs.* Ozark White Lime Co., 120 Ark.. 528, 180 S. W., 199.

The case of Hershey *vs.* Thompson, 50 Ark.. 484, *supra,* is one of the most illuminating decisions of the Arkansas Supreme Court upon this question, announced through Judge B. B. Battle, one of the State's former greatest judges.

In holding that a description "Part of the S. E. ¼ of N. E. ¼ Section 15, T. 18 N. R. 32 W.," was void in a tax deed, Judge Battle said:

> "In the assessment of lands for taxation the statutes of this State provide that the description of each tract or lot of real property shall be such as to identify it and distinguish it from all other tracts or lots. The object of such description is to inform the owner and all other persons of the tracts and lots assessed and the amount of taxes levied thereon. From the description given of the tract purchased by appellant for the taxes of 1878, it cannot be ascertained what part of the southeast quarter of

> the northeast quarter of said section fifteen, containing five acres, was assessed. In fact, there was no description, and the assessment of this indefinite and unknown part was void."

Judge Battle further said in denying a claim under a State statute for betterments:

> "To succesfully assert a claim for improvements, it is said, an occupant must ordinarily show not only that he occupied and claimed the land in good faith, but also under color of title, *i. e.*, under some instrument or paper writing presenting the appearance or semblance of title. A deed which contains no designation or description by which the land intended to be conveyed can be identified presents no semblance or appearance of title, and does not constitute color of title. Such deeds themselves put the holder on notice that they have no title. They do not purport to convey anything and are void. Such is the deed under which appellant claims. No one can be heard to say he has been misled by such a deed."

It is therefore submitted that the attempt of the Legislature to confirm the assessments in the case at bar against 12 miles of pipe line, which was a part of 25.49 miles of pipe line in the district was ineffectual.

As to the wire, the evidence shows there is a single strand running almost at right angles from the pipe line, from Mandeville to Texarkana, and thence to Index, a distance of 17 miles, and was not upon the right of way of pipe line, and the assessors undertook to assess it jointly with 12 miles of pipe line. The pipe

line did not own the right of way and the assessment does not purport to assess all the pipe in the district or the right of way upon which two distinct pipe lines were laid.

Aid From Cooley On Taxation, Vol. 1, 3rd Edition.

Mr. Cooley, in his work, Cooley on Taxation, 3rd edition, Volume 1, page 738, says:

> "The authorities in general are imperative in holding that an unauthorized division of a tract in the assessment, which tract has no known legal subdivisions, is as fatal as an unauthorized grouping of distinct parcels would be."
>
> Reading *vs.* Finney, 73 Pa. St., 467.
> Wyman *vs.* Baer, 46 Mich., 418.
> Morgan *vs.* Smith, 70 Tex., 637.

Mr. Cooley says with reference to amendments of assessments, in Cooley on Taxation, Volume 1, 3rd edition, pages 544-555:

> "Thus it has been held in Vermont that if a tax sale is fatally defective by reason of the failure of the town clerk to certify in his record that the advertisements were published as required by law, the clerk cannot make it good, by amending his record after the time for redeeming from the sale has expired. The reason is that the owner, relying upon the record, may have omitted to redeem, inasmuch as his land has not been legally sold.
>
> "No amendment can make valid a tax sale that was void for want of a proper description

of the land in the assessment and subsequent proceedings."

Roberts *vs.* Chan Tin Pen, 23 Cal., 259.

We quote from Mr. Cooley's Work on Taxation, Volume 1, 3rd Edition, page 742:

"The purposes in describing the land are: First, that the owner may have information of the claim made upon him or his property; second, that the public, in case the tax is not paid, may be notified what land is to be offered for sale for the non-payment, and, third, that the purchaser may be enabled to obtain a sufficient conveyance."

On page 744 we quote:

"The reason for this is the recognized principal that it is the land, and not the owner, which is chargeable and to be charged with the tax. It must, however, be susceptible of identification as the land assessed, otherwise the sale would be void."

Woodsie *vs.* Wilson, 32 Pa. St., 52.

And we quote further, on page 748 of Mr. Cooley's work on taxation:

"But where the description in an assessment could apply to either of two pieces of land, it is void for uncertainty, *as is also a description, which is part of a section, block or lot, without showing how much or giving boundaries.*"

Texarkana Water Corporation *vs.* State, 62 Ark., 188.

See many cases sustaining this principle in Footnote, Volume 1, Cooley on Taxation, 3rd Edition, page 748.

Legislature Cannot Confirm an Assessment Void for Insufficiency of Description.

With reference to the special curative acts, purporting to validate the assessment against the pipe line, we quote from Cooley on Taxation, 3rd Edition, Volume 1, page 514:

> "One very precise limit to the power to cure these proceedings is this: they cannot be cured when there was a lack of jurisdiction to take them. This is a rule applicable to every species of legal proceedings. Curative laws may heal irregularities in action, but they cannot cure a want of authority to act at all. And in this regard the rules which apply to retrospective and to prospective healing acts are the same."
>
> Wall *vs.* Wall, 124 Mass., 65.

It will be remembered that there were two pipe lines owned by the Prairie Pipe Line Company when the assessment was made in 1920, aggregating 25.49 miles (R., 73). They were separate and distinct, and differed slightly in length. One was laid in 1909 and the other in 1915 under land by virtue of permissive contracts with the owners. The right-of-way contract provided that the pipe line could lay other pipe lines under the surface of the same lands upon payment of a like consideration as had been paid (R., 86). The assessment being against 12 miles of pipe line, it cannot

be determined which of the pipe lines or which miles of pipe were intended, and therefore the assessment was invalid and the curative acts attempting to validate the assessments were void.

VI.

Questions of Estoppel.

The Court of Appeals Misunderstood the Facts Upon This Question, and Mis-applied the Legislative Acts Involved.

This case was argued orally and by brief at St. Paul in the United States Circuit Court of Appeals, before Stone and Lewis, circuit judges, and Symes, district judge, May 26, 1926 (R., 218), and the opinion was filed by District Judge Symes April 18, 1927 (R., 225).

The recitals of the opinion, it is respectfully submitted, show that the facts in this case were misunderstood by the court of appeals, and as a consequence the decision of the lower court was reversed.

One of the propositions involved under this heading was whether or not the petitioner herein was estopped from prosecuting this suit for cancellation of the assessment of July 24, 1920 (R., 51), for alleged benefits of $60,000 on 12 miles of pipe line and wire, as a cloud upon petitioner's title thereto, on the ground that it had failed to avail itself of administrative remedies providing for the correction of the assessment.

See second paragraph (giving the right of appeal from the commission to the county court—R., 175) of Section 7, Act 153, approved March 5, 1915.

Also four lines, beginning with the second line from the top of page, R., 189 (making the decision of the commissioners final), Section 6, Act 15, approved January 29, 1917.

We now quote from the opinion of the court of appeals:

> "The Miller County Highway District was created by a special act of the legislature of Arkansas in 1915, and empowered to construct 60 miles of highway and a bridge over the Red River. The usual district organization, consisting of a commission of three resident land owners, was provided for, with the power and duty to appoint three assessors to assess all benefits accruing as a result of the improvements to the real property within the district, including railroads, pipe lines, etc., and all other franchises connected with the realty in said district. Later it was concluded that the bridge and roads could not be constructed within the limit of cost prescribed by the original act, towit, 15 per cent of the value of the real property subject to assessment; so the law was re-enacted and amended by Act No. 15 of the year 1917, and additional land included. This amendment ratified and confirmed the assessment theretofore made by the assessors, and provided for a similar assessment on the new lands, and increased the authorized mileage to 75 miles."

This statement is literally correct, but the assessment that had been made, which this act attempted to ratify, was for benefits to accrue from building 60 miles of road and a bridge across the river, and the

amount assessed against the 12 miles of pipe line was $59,340. Its date was April 29, 1916 (R., 55). A bridge district was organized, under Act 16 entitled "An act to create Red River Bridge District," covering the same territory, approved January 29, 1917, and providing for assessment of benefits on account of the bridge. This bridge district is involved in this case only in so far as the fact exists that it was made the subject of a new district, under a distinct act (R., 196-207).

Did the Arkansas Legislature have the power to adopt the assessment of benefits on account of 60 miles of highway and a bridge across Red River, as the benefits under changed plans for 75 miles of highway without the bridge?

It has been shown in the testimony and all the proceedings in this case that the assessment ratified, however, is not the one involved in this case. The assessment in controversy was made July 24, 1920 (R., 51), and the 12 miles of pipe line and wire were reassessed benefits at $60,000 (R., 57). The board of commissioners ordered a general reassessment of all property in the district on account of change of plans (R., 56).

The authority of the board of commissioners to authorize the assessors to make this reassessment is contained in the same section of Act 15 (see eighth line from top of page R., 188, Section 6), which ratified the first assessment.

> "If either the board or any individual thinks that by reason of said changes of the plans the assessment heretofore made has become in-

> equitable, *a new assessment of benefits shall be ordered by the board*, and the board may, not oftener than once a year, order a reassessment of the benefits in the entire district; but in no event shall the total amount of the assessed benefits in the district ever be diminished."

The court of appeals also erred in the following statement (R., 222):

> "The original act (153) provides an opportunity for all property owners aggrieved to appear before the Board of Assessors and have a hearing, with right to appeal to the Commission, and from the Commission to the *county court*. The appellee never availed itself of this remedy. *They say that because they were a non-resident corporation, they are not bound thereby.* The record shows that they had employees in the district, including a taxing officer, charged presumably with the duty of looking after tax matters. Their predecessor in title, the Prairie Pipe Line Company, paid three or four installments of these taxes without protest. There is testimony that Mr. Hilford, who at one time had charge of the pipe line property in Miller County, knew the assessments were being made. Another witness testified that a letter was written by the *Tax Commission* to the pipe line company, giving them the information as to both the county, State and road taxes, under date April 5, 1917, receipt of which was acknowledged."

Aside from the fact that the original assessment, which was ratified and remained ratified, until it was abrogated, July 24, 1920, by the Commissioners under

authority of Section 6, Act 15, it is contended here, as it was in the court of appeals, that the remedy of appeal from the Commissioners to the county court was not only insufficient, but was absolutely void, as the Arkansas County Court has no jurisdiction beyond the limited powers given by the constitution as a probate and administrative court.

This question is concluded by a decision of the Supreme Court of Arkansas, in the case of Morgan Engineering Company *vs.* Cache Drainage Dist., 115 Ark., 437, at page 441, where it is held that jurisdiction cannot be conferred upon the county court to settle a controversy arising under the administration of a special legislative act.

This interpretation by the Supreme Court of Arkansas was fully recognized as controlling in the fact that Section 2 of Act 83, approved February 14, 1925, amending Section 6 of Act 15 (R., 188-189), provides for an appeal from the Commissioners to the chancery court, a court of general jurisdiction, see said Act 83, Sec. 2, in appendix to this brief, as it is not copied in the record, but that remedy of appeal by said amendment was too late to afford relief under either the first or the second assessment.

The thorough, able and exhaustive opinion by Chief Justice Taft, in Road Improvement District No. 2, Lafayette County, Ark., petitioners, *vs.* St. Louis Southern R. R. Co., 257 U. S., 547-562, involved the interpretation of Acts of Congress authorizing removal of causes from State courts, and this decision was cited by respondents in the court of appeals as holding that the county court had jurisdiction to entertain an ap-

peal from the Commissioners. There is a clear distinction between the jurisdiction of the county court, Chapter 81, Title "Highways," Subdivision 7, Crawford & Moses Digest of the Statutes of Arkansas, 1921, whereby the county court is authorized to build a road under its constitutional jurisdiction over public roads, and that in this case, where appellate jurisdiction is attempted to be conferred by legislative act upon a controversy over assessments arising under a special legislative act.

The Federal courts will accept the interpretation of the supreme court of a State upon its statutes.

A. G. Risty *et al. vs.* Chicago, Rock Island & Pacific Railway Co., 270 U. S., 378-390 (opinion by Mr. Justice Stone).

With reference to that part of the opinion of the court of appeals, that there were employees in the district, including a taxing officer (charged presumably with the duty of looking after tax matters), we have to say there were two taxing officers of the pipe line company, mentioned in the evidence; the first named, Van Tuyl (dead when the evidence was taken in this case), and his successor, H. C. Black. They had no notice of either the assessments within the thirty days time in which to ask for relief.

The letter referred to which Van Tuyl received from the deputy collector, A. B. Little (not Tax Commission), was dated April 15, 1917, notifying him of the error committed by the collector, in furnishing a tax list for the year 1916, in which the collector had overlooked, including the special road tax of $395.20 (R., 68). This was the first actual knowledge that the

petitioner had of the road tax, and the first assessment of benefits had previously been filed April 29, 1916 (R., 45). In the statement furnished Mr. Van Tuyl it was shown erroneously that the entire road tax would be paid out in 15 annual payments of $395.20, total $5,934 (R., 71). Each Act, 153 and 15, also furnished a strong regulation compelling the payment of the road taxes when the general taxes were paid by any person or company liable for the road tax, by fixing a penalty against the collector of $100 in each case if he received the general taxes without the road tax. This would have incurred a penalty of 25 per cent on the general taxes if the payment had not been made.

With reference to that part of the statement above-quoted, "the Prairie Pipe Line Company (predecessor of the Standard) paid three or four installments of these taxes without protest," the taxes were paid for three years, under the circumstances and requirements stated above, for 1916, $395.20; 1917, $395.60; 1918, $406.01 (Black R., 101).

The court of appeals erred in considering the payment of taxes for these three years on the assessment of 1916, as an estoppel to contest the second assessment of 1920.

Under the new assessment of 1920, the taxes were increased against the pipe line to $600, none of which have been paid (R., 112).

Then suit was brought by the Prairie Pipe Line Company to enjoin the collector from not accepting the general taxes without the road taxes, and the su-

preme court sustained the contention, and required the collector to so receive said general taxes.

Eason *vs.* Prairie Pipe Line Company, 149 Ark., 669.

Road taxes have been assessed annually since that time, but no payment has been made by the pipe line company.

With reference to the knowledge of Mr. Black, who succeeded Van Tuyl, he testified that he came to Texarkana in the spring of 1921 to pay the general taxes, and for the first time he learned that the second general assessment of benefits had been made the previous year, July 24, 1920, which was too late for relief by the Commissioners.

As to the reference in the opinion above quoted, to one Hilford being in charge of the pipe line property in Miller County, and knew the assessments had been made, there is no direct or positive testimony that he knew the assessments had been made. He was dead at the time the trial took place, but it was shown by Black that he had nothing to do with accepting notice or reporting upon the subject of taxes, and that his only duties were to see that the pipe lines were in shape, and that the station ran when he was told to run it (Black., R., 110).

With reference to that part of the opinion of the court of appeals above quoted, "they (the petitioner) say because they are a non-resident corporation, they are not bound thereby" (the assessment); the court of appeals misinterpreted the plaintiff's contention. The plaintiffs claimed that by reason of its non-residence,

it had no actual notice of the assessment (which was published in a local paper with limited circulation), and it was not estopped from instituting this suit to prevent the taking of its property without due process of law, and denying it the equal protection of the laws. This was the course pursued in a similar case, Thornton *vs.* Road Improvement District No. 1, Clark County Ark., 291 Fed., 527. The opinion was announced for the United States Circuit Court of Appeals by Judge Sanborn, and the other judges with whom he sat in that case, were Circuit Judge Kenyon and District Judge Symes.

We have thus gone into some detail for the purpose of showing that if there had been no second assessment, which superseded the first, that there was no adequate remedy provided for relief in the first assessment before the Board of Commissioners, and by appeal to a court which had no jurisdiction.

No Adequate Remedy was Provided for Relief Against Errors in the Second Assessment of July 24, 1920.

The administrative remedy provided for under this assessment in Section 6, Act 15, affords no more relief than Section 7 of Act 153, governing the first assessment. The court of appeals did not mention the alleged remedy provided for correcting the second assessment, which is the only assessment that is outstanding.

The assessment of 1920 took the place of the assessment of 1916, under which assessments had been paid for 1916, 1917 and 1918, but since the assessment of

1920 no assessments have ever been paid by anyone under the 1916 assessment.

Under Section 6 of Act 15 (R., 187-189) a complaining taxpayer was permitted to appear before the Commission for the purpose of correcting unequal assessments, but said Commission only had the right to increase or decrease the assessment (see bottom page, R., 188), and did not have the right to give full relief where there was no benefit. In the 13th line from top of page (R., 188) the act reads:

> "But in no event shall the total amount of the assessed benefits within the district *ever be diminished;* and if any future assessment shall be for an amount less than the preceding assessment of benefits, such assessment shall be void, and the preceding assessment shall be continued in force."

Finally, it was provided at page 189, beginning with the 2nd line:

> "Any property owner aggrieved by the action of the Board of Assessors, may appeal to the Commission, within thirty days, and the Commission shall meet at some convenient time and hear all appeals, and determine the same, *and their decision shall be final.*"

It is submitted that no one should be expected to present his claim before a board of commissioners whose authority to make changes was so hedged and obstructed by the fact that the entire assessment could not be reduced, and whose decision would be final.

As previously shown, the pipe line owned two adjoining tracts, near Mandeville, one containing 40 acres and the other 31.5 acres, upon which the tanks and pumping station are erected. They were assessed both in the first assessment and in the other assessment, as other lands in the district (R., 61). The assessment against this land is not in controversy.

With reference to the contention of Miller County Highway & Bridge District that the petitioner predecessor Prairie Pipe Line Company did not avail itself of the administrative remedies provided for in Section 7 of Act 153, approved December 5, 1915, by going before the Commissioners and presenting the complaint and appealing to the *county court*, we have answered fully in the foregoing brief upon the merit of the proposition, as though there had been no new general assessment. We should have been content to submit the question solely upon the fact that there was a reassessment made on July 24, 1920, by authority of the same section (6) of Act 15, which took the place of the first assessment. The second assessment was made three years thereafter, and gave a purported remedy for contesting it, and we think it was error for the court of appeals to have rested its decision in any respect upon the failure to appear before the Commissioners, from which anpeal could be made to a county court which had no jurisdiction to hear it. The court undoubtedly overlooked the fact that there was a reassessment and a right to reappear and make a contest before the Commission.

But as to that, we have already answered in the foregoing argument. The provision with reference to

contesting the new, substituted reassessment, only provides for a complaining taxpayer to appear before the Commission, whose ruling should be *final.*

The remedy provided by the second assessment is more faulty than the first. It was not mentioned by the court in its opinion, and seems to have been entirely overlooked. We are led to believe that if the court had looked at that provision, it would not have laid any stress at all on the failure of the petitioner to submit *all its rights to a final* determination by the Commission.

The authorities with reference to inadequacy of the remedy at law and the right to proceed in equity in this kind of case seem to be one way. We will not quote from them at length, but will submit the citations:

Road Improvement District No. 1, Franklin County, Arkansas, *et al.*, appellants, *vs.* Missouri Pacific R. R. Company, appellee; decided by the Supreme Court of the United States, April 18, 1927; see United States Supreme Court Advance Opinions, May 16, 1927, No. 13, 71 L. Ed., —.

George Wallace *vs.* Walker D. Hines, 253 U. S., 782; opinion by Mr. Justice Holmes.

C., R. I. & P. *vs.* Risty, 270 U. S., 378.

Munn, county treasurer, *vs.* Des Moines National Bank, 18 Fed. Rep., 2d Series, 269.

Nevada-California Power Co. *vs.* Hamilton, county treasurer, 235 Fed., 316.

Thomas *vs.* Kansas City Southern Ry. Co., 277 Fed., 708.

Kansas City Southern Ry. Co. *vs.* Ogden Levee Dist., 15 Fed. Rep., 2d Series, 637.
Kansas City Southern Ry. Co. *vs.* May, Volume 2, Fed. Rep., 2d Series, 680.
C., R. I. & P. *vs.* Risty, 297 Fed., 710.
C., R. I. & P. *vs.* Risty, 282 Fed., 364.

We therefore respectfully submit that the United States Circuit Court of Appeals was in error in reversing the judgment of the District Court of the United States for the Western District of Arkansas, Texarkana Division.

T. M. MILLING,
W. H. ARNOLD,
W. H. ARNOLD, JR.,
DAVID C. ARNOLD,
Counsel for Petitioner.

September 17, 1927.

THE TESTIMONY.

It is unnecessary that we should give a summary of the testimony introduced in this case bearing upon the material points. The assessors were required by the legislative acts to make assessments of the lands and utilities in the district, according to the benefits received, and their method and the discrimination resulting is shown by the testimony of one assessor (Geo. T. Conway), who testified (R., 53-65), as follows:

George T. Conway.

> "The territory outside the city was divided into zones, the land within one mile of the road was zone 1, within 2 miles, zone 2, within 3 miles of the road, zone 3. The benefits were assessed at $30.00 per acre for zone 1, $25.00 per acre in the second zone, and $20.00 per acre in the third zone. We did not take into consideration the value of the land itself, but simply its location with reference to the road, and did not take into consideration the dwellings. There were plenty of houses throughout the District, and a great part of this land was in cultivation" (R., 53-54).

With reference to the pipe line, the witness said:

> "The assessment was extended against poles, pipe, wires, plant, tankage, etc., in the District" (R., 54). "Could not say whether there were any poles" (R., 54).

As to what pipe there was there:

> "Well they come into Miller County at Red River, and went out of Miller County at the lower end" (R., 54).

Assessments of Benefits Palpably Arbitrary.

> "We figured that a pipe line and what they had there would derive that much benefit from this road. We took into consideration all that we thought would have any bearing, and the elements were, we considered these people, the Prairie Pipe Line Company, their pipe line and their telephone line, to their pumping station and tanks, which was practically wholly within this District, would receive benefits from this road amounting to $59,340.00" (R., 55).

Later the witness showed that the benefits against land of the company on which their tanks and buildings were located, consisting of 71.5 acres near Mandeville, were assessed separately, $30 per acre, the zone plan (R., 59, 62), and no contest is made herein as to that assessment (R., 61).

The foregoing assessment was made April 29, 1916 (R., 45), under Act 153, providing for construction of sixty miles of road and a bridge across the river (R., 56).

Four or five years later (the witness stated), July 24, 1920 (R., 51), there was a re-assessment made by order of the Board of Commissioners. The lands outside the city were assessed in the same way as before (R., 56), and Prairie Pipe Line Company, 12 miles

pipe line, and twelve miles, telegraph and telephone line, $5,000 per mile, or $60,000 (R., 57). This took the place of the first assessment (Josephs, Secretary of the District), (R., 46).

The benefits on lands in Texarkana were arrived at *ad valorem* basis (R., 57). This was an entirely new thing in this country, and we did not know where we were (R., 57). The benefits on city property was assessed the same as *ad valorem* valuation (R., 61). The pipe line was not assessed on *ad valorem* basis (R., 65).

> "The roads as originally laid out did not conform to the roads as built and there were some that were in zone 3 that should have been in zone 2 and *vice versa*, and these readjustments were made (by a general readjustment, July 24, 1920), so there was an equal benefit according to the zone as they were finally build" (R., 62).
>
> "The zone system was followed in the reassessment as in the first, also was applied to the 71.5 acres, the plant of the pipe line $2,160.00 (R., 62). The re-assessment was made general under Act 15, approved January 29, 1917, by authority of the same section (R., 187-188), which attempted to ratify and confirm the first assessment of benefits." The language authorizing the re-assessment, "And if either the board or individual thinks that by reason of said changes in the plans the assessment heretofore made has become inequitable, a new assessment of benefits shall be ordered by the board."

The assessor said the total benefits to the pipe line (which did not include the land on which plant is lo-

cated, assessed separately), Prairie Pipe Line Company, 12 miles pipe line, and 12 miles telegraph and telephone lines, $5,000 a mile, or $60,000 (R., 57).

> "Q. How did you arrive at the benefits of $5,000.00?
>
> "A. Because we thought they were benefited that much. We thought a pipe line coming in and a telephone line would be a greater benefit than a telephone line located where they didn't have any road. Another thing, they had the pumping station and they would use the road in going to and from their work.
>
> "Q. The Prairie Pipe Line Company owned certain lands out here at Mandeville?
>
> "A. I am not positive of that" (R., 57).

F. Ray McGrew.

I am the vice-president of appellee, and have been such since its organization. The Standard Pipe Line Company, Inc., purchased the pipe lines of the Prairie Pipe Line Company in Arkansas in December, 1922, at which time there were two lines of eight-inch pipe in this district, and later the Standard Pipe Line Company, Inc., laid additional lines of pipe, at which time we acquired from the various owners of property by purchase the right to lay these additional lines. Prior to the time we constructed the additional lines (which was in 1923), we negotiated for the additional right-of-way upon the same consideration as when the original lines were laid, *and when these additional lines were laid in 1923 we paid for the privilege the same as was first paid.* I am familiar with the lines of road and boundaries of the road district in a general way,

and the value of this pipe line has not been enhanced by the construction of the roads. There are no roads that you might consider as paralleling our lines. It might be said that when a road parallels our pipe line right-of-way for a limited distance at a remote point, remote from the pipe line, in the matter of pipe line construction consideration to roads is never given. To project a pipe line from one point to another, generally we put a straight rule on the map and let it fall where it may, and that is the point where we generally construct the line notwithstanding any connection with good roads. The shortest distance that a pipe line can be constructed between two points is the best. It shortens your line of transportation, increasing volume and lessens the cost. Our transportation is carried on chiefly over the right-of-way of the pipe line, and if we were to dispose of this line to someone, the fact that these highways existed would not have any bearing upon its value. *Good roads might be construed in connection with the railroads as feeders and act as a factor in increasing the revenue of the railroad; that is not true in connection with the pipe line. By no stretch of imagination can I figure that the improvement of roads within this district has been of any benefit.* I have different ideas from a personal view point as to the necessity of good roads. The lines which we purchased from Prairie Pipe Line Company were erected in 1909 and 1915, which was before the construction of the roads by appellant. *We have never paid any taxes to appellant road district. At the time of the assessment of benefits made in July,*

1920, we neither had the right of way nor privilege to lay the additional lines in 1923, nor the materials with which to construct the same. *Line walkers usually patrol about forty miles of pipe line, usually covering the same twice a week.* As to practical pipe line construction, I have had twenty-five years' experience, and have occupied every position that is available on pipe lines with one or two exceptions. The pipe line of Standard Pipe Line Company, Inc., enters Arkansas about 12.38 miles northwest from De Queen at the Oklahoma-Arkansas State line, and runs southeast to a point on the Arkansas-Louisiana State line, near Ida, *and said company is engaged in no business whatever except the transportation of oil from the Oklahoma-Arkansas State line to some point in Louisiana.* Generally the life of a pipe line is *twenty years.* In 1920 replacement cost of an eight-inch pipe line would be $11,500; in 1915 it would be between $8,000 and $9,000 per mile. Depreciation is figured at five per cent, and these lines that were put down in 1909 and 1015 were not worth as much in 1920 as they were when they were put down. The value of these lines in 1920 would be the difference in construction costs less depreciation. There have been no major repairs necessary on the pipe line in this district *with the exception of the removal of a piece of line near the river, a part of that line was taken up and placed on a new right of way.* The changes were not done on account of bad conditions alone, but in order to meet our condition at the river we re-aligned our pipes and at the same time took advantage of the repairs that

were necessary, and there have been no major repairs, no serious breaks or anything of that kind since we have been operating the line. Unless the roads were constructed especially for the purpose of pipe line construction, it would not make any noticeable difference in the cost of construction, and the only difference would be in the item of hauling pipe and the construction of the pipe line. The *cost of stringing an eight-inch* pipe line will run *between $375 and $400* (R., 86-93).

It is a general practice of the pipe line operation to have what is called a line walker. They are usually called upon to patrol approximately forty miles and that is usually covered twice a week, that is a round trip within the week. The patrol is to detect small leaks (R., 89).

We have one automobile located in this district (R., 89).

Whenever there is pipe line work, there are generally workers, no matter where the work is done. *There are a certain class of people who follow the pipe line business just like they follow the circus,* and when we have a camp and construction work in a place where you haul the men, the laborers are paid the same. The crossing of the improved highways presents an additional expense to us, in that we have to meet certain expenses and requirements of the good roads. To construct a pipe line across an improved highway, you have to approach the highway on either side, handle the embankment in a particular manner in order to prevent caving (R., 93 to 100).

W. B. Fulton.

W. B. Fulton testified that he is Chief Engineer of Standard Pipe Line Company, Inc., having served in that capacity since the organization of said company, and had eight years' experience with said company and Standard Oil Company of Louisiana, and was familiar with the location of the pipe line within Miller County Highway and Bridge District, *and as of July 4, 1922, there were 25.49 miles of pipe line within said district*, and that *the telegraph and telephone line came down over the Southwestern Bell Telephone Company's poles*, and that said company *owned no poles within said district, but leased the right from the telephone company to string wires on their poles.* The pipe is made of rolled steel, and is bought from the mills and delivered at our unloading points, which is generally on siding along the railroad, and they are unloaded and stacked. The pipe is buried from eighteen to twenty inches. Inspections of the pipe lines are made by an employee called the line walker, and he has a section that he covers and makes the round trip approximately once a week. He carries his own tools with him for repairing and he walks the entire line. He never digs up the line, but notices from the condition of the soil whether there are leaks. The roads have not increased the value of the pipe lines, nor the volume or capacity of the pipe lines. The Standard Pipe Line Company, Inc., *acquired this property in December, 1922*, and there *have been no major repairs* (R., 74). The average length of a joint pipe is

twenty-one feet, and the joints are connected up with collars, and they are screwed into these collars. The line walker has his caulking tools and caulks these joints. None of the roads in this district parallel the said pipe line, and the expense of upkeep has been no less now than it was before said roads were built. The Standard Pipe Line Company, Inc., receives no products for transportation through this district or through this line, and does not sell any of its products in Arkansas, and has no commodities for sale whatever except transportation (R., 72-75).

On cross-examination the witness (Fulton) testified:

At the present time there are 51.25 miles of pipe laid in said district. During the year 1920 there were 25.49 miles in said district. There were two lines in said district during the year 1920, and now there are four lines of eight inch. The telephone line was built on the right of way in 1923, and I have no knowledge of a telephone line prior to that time. In building the line in 1923 we unloaded our pipe at the railroad sidetrack and hauled it out and strung it along the right of way. The pipe was unloaded at Paup Spur, Texarkana and Genoa, and we used trucks and teams over the roads. On account of the expense of rehandling the pipe, it was not our custom to unload the pipe from trucks on the side of the gravel road and then haul the pipe down the right of way with teams.

On re-direct examination, the witness testified:

If trucks hauled the pipe, they were the trucks of appellee, upon which *Arkansas license had been paid.*

The hauling of this pipe and the construction of a new line does not benefit the old line. The roads have not helped us in the construction of a new line, and they did not benefit the old ones. It is not a pipe line until you get it in the ground. We pay no attention to good roads, but mainly to the shortest distance between two points. The main advantage to a farm is the advantage the farmer receives from hauling his products over the road to market. We do not haul any of our products over the road (R., 78 to 85).

At this point there was introduced in evidence the contract for right of way, evidencing the rights of the appellee to lay and maintain its pipe lines under lands within said district.

H. C. Black.

I am tax commissioner for the Prairie Pipe Line Company, and have been since July 1, 1919, and the entire system of Prairie Pipe Line Company is within my jurisdiction, including the line within appellant road district, up until the time Prairie Pipe Line Company sold the same to Standard Pipe Line Company, Inc., December 1, 1922, at which time there were two parallel eight-inch lines, the first of which was laid in 1909, and the second of which was laid in 1915. In 1920 the telegraph and telephone line paralleled the pipe line from the Louisiana line up to Mandeville, and *then it came into Texarkana over some other poles, and from Texarkana went north to Index. It was just*

a wire, no poles. We paid an annual rental for the permission of having our wires attached to the poles of some other company. There was just one Number 9 steel wire of the value of $15 per mile. Seven years have passed and no suit has been brought against the Prairie Pipe Line Company for the collection of any assessment by the appellant road district. Each pipe line occupies a space of not more than nine inches wide, and the *acreage actually used by the company is about 9/100 of an acre to the mile.* The earnings of the pipe lines depend on the charges received for the transportation of crude petroleum oil that has been tendered to it for transportation as a common carrier, depending upon production and the demand, no inexhaustible field of petroleum has even been discovered. The common experience of mankind is that the deposits of oil are being exhausted, and that the old fields are declining in production and new production coming on. When oil ceases to be produced along this line, the system will have no value beyond junk value. It will have no value for transportation purposes (R., 107-114). The construction of roads will not extend nor increase the life of the pipe line.

TESTIMONY OF H. C. BLACK.

No Notice of Assessment—The Authority of J. D. Hillford—Explains Three Annual Payments.

I have been tax commissioner for Prairie Pipe Line Company since July, 1919, having charge and supervision of all activities of the company with reference

to making of renditions of its properties, the payment of taxes upon its properties, and the handling of every item and form of tax with the exception of the income tax. *J. D. Hillford was the local workman in charge of the pumping plant in Miller County, Arkansas, in 1920,* and his only *duties were to have charge of the operation* of the pipe-line properties; he did no business for the company, conducted no business for the company, *and had no authority beyond an operating superintendent, and he was not designated as an agent for this company;* he had nothing to do with any item of business with the Prairie Pipe Line Company. *The Prairie Pipe Line Company did no business in Arkansas, maintained no office, paid no franchise tax in the State of Arkansas, and was engaged solely in the transportation of crude oil in interstate commerce.* The *movement* of the oil through the pipe-line system was *under the pipe-line dispatcher at Independence, Kansas.* The only thing *Mr. Hillford had to do was to see that the pipe lines remained in shape, and that the station ran when he was told to run it. Mr. Van Tuyl was the tax commissioner at the time of the passage of the first act creating Miller County Highway and Bridge District.* In the year 1916 we paid assessment of $395.20 against the pipe lines, and the assessment for 1917 was $395.60, and the assessment for 1918 was for $416.01, which three assessments were the only ones paid by Prairie Pipe Line Company. I never heard of the assessment of benefits in 1920, and never had any knowledge of it until in the latter part of March, 1921, when it was discovered that the taxes

had jumped from $418 to $600. On investigation I *found there had been a re-assessment some months* before, along in July the previous year. After I became tax commissioner for the company, I investigated the tax as levied by Miller County Highway and Bridge District, and I determined not to pay the same any *further and attempted to pay the general* taxes without paying the special tax to Miller County Highway and Bridge District, which the *collector refused to receive unless I paid the assessment*, and *through injunction he was compelled to receive it* (R., 107-113).

Eason *vs.* Prairie Pipe Line Co., 149 Ark., 669.

Right of Way.

The right of way contains the following provision:

> "We the undersigned hereby grant (to the Pipe Line Company, its successors and assigns) the right of way to lay, maintain, operate *and remove* pipe lines, for the transportation of oil or gas, together with the right of ingress and egress on, over and through the following described lands situated in Miller County, Arkansas, to wit:". (Then follows the description.)
>
> "The said undersigned owners, their heirs or assigns, to fully use and enjoy said premises, except as the same may be necessary for the purposes herein granted to the said Pipe Line Company, its successors or assigns."

Then follows a provision for the payment of damages which may arise from laying, maintaining, operating or removing said pipe line. It is further understood and agreed that the said Pipe Line Company, its suc-

cessors or assigns, may at any time lay an additional line or lines of pipe alongside of the first line, as herein provided, upon the payment of a like consideration for each additional line when laid, subject to the same rights and conditions (R., 85-86).

E. L. Stern.

I am superintendent of the Texas Pipe Line Company in Louisiana, and have charge of all the company's lines in said State. I can see no advantage to pipe lines from improved roads; we never take roads into consideration at all, but run on what we call an air line from starting point to destination, and for that reason good roads do not come very much in contact with pipe lines. In crossing a dirt road you dig right through it, and when you come to a good road we have to bore through with an auger, and then we case the line under the good road outside of the pipe line with pipe a size larger than the line we are constructing, and the casing is an extra expense, and the excavation across the road is always more expensive, because good roads are ditched out deeper on both sides of the road, and we have to go under this excavation and ditches and, if there is a break in the pipe line under the hard-surfaced road, there would be more expense in the repair of it. After constructing the line the maintenance is usually kept up by a line walker, who travels over the pipe line and upon any good road (R., 104-105). The good road helps a farmer in hauling his trucks, but it would not help the pipe line, because it is in the ground and we seldom have occasion to go see it (R., 106).

Ad Valorem for General Taxation. Lands Assessed at One-tenth of Value.

L. C. ADAMS, witness for and vice-president for the district, testified that he owned 5,000 or 6,000 acres of rich bottom land in the district. The lands were increased in value by levee drainage ditches and roads (R., 169). The cleared land is worth $100 per acre, of which he had 2,500, and that in the woods is worth $40 per acre, inside the levee. "As a matter of fact the lands inside of Miller Levee District No. 2, which lies inside of the road district, is rich land all along the river front. There are other farms of rich land in that vicinity."

W. J. PAUP, witness for the district, testified that the cleared land in that part of Miller County Highway and Bridge District that is within Miller Levee District No. 2 was assessed for taxation at $10 per acre, and the woods land at $4.50 per acre. The average assessment of hill lands was at $5 and $6 per acre. The whole assessment for road purposes was $6,687,178, of which the total assessment of benefits in Texarkana and the town of Mandeville (unincorporated) was $2,561,100, and outside of Texarkana and Mandeville, $3,664,445.

The total area in the Miller County Highway and Bridge District is 136,322 acres, which embraces the rich lands of Miller Levee District No. 2, 90,000 acres, about which Adams and Paup both testified.

Annual Assessments Upon Benefits.

Mr. Paup further said: The levy on the benefits for the year 1926 was 6⅔ mills for 1917, the same; 1918, 7

mills; 1919, 7 mills; the years 1920, 1921, 1922, and 1923, 10 mills, and for 1924, 8.5 mills (R., 158-159).

Testimony that Pipe Line Company Used Roads in Laying Down New Pipe Lines.

Witnesses for the district, E. H. Peyton, L. C. Adams, H. G. Sanderson, and C. S. Christian, testified that when the two additional pipe lines were laid in 1923 the improved roads were used in part for hauling the pipe and men.

D. B. Owens, witness for the district, testified that the roads were used during a preiod of time of about 2½ months in 1923 in taking up and relaying part of a line near the river (R., 129). And the Pipe Line Company was using wagons and trucks (R., 131). About two miles of old pipe was taken up and new pipe put in its place in 1921 (R., 136). They were unloading and hauling there, I imagine, two or three weeks. We did not have much of a force and some days it would rain and the men would not work, and things like that (R., 136).

C. S. Christian, engineer for the district, testified that in his opinion the Pipe Line Company was benefited by the building of the roads, by reason of hauling men and materials; that the Pipe Line Company was given no special consideration with reference to where the roads ran (R., 149). There were roads of some kind that the people used before the new roads were built (R., 148). The new roads were laid over places where old roads existed before, public roads or good roads or what not (R., 148).

Louis Josephs.

Louis Josephs testified that he was, and had continuously been, secretary of the Board of Commissioners of Miller County Highway and Bridge District since its creation under original act 153 of 1915, and under amended act 15 of 1917. He produced the original assessment book showing that Prairie Pipe Line Company was assessed valuation (without benefits) of poles, pipe, wire, plant, trackage (tankage), etc., in the district, $59,340, benefits, $59,340, and value with the improvements, $115,680 (R., 42 at bottom of page and R., 43, top of page).

It is shown by undisputed testimony that the Pipe Line Company owned 71.5 acres (R., 61), upon which the tanks and pumps were located, near Mandeville, assessed separately, and that there were no poles. This assessment was filed April 29, 1916 (R., 45).

Re-Assessment of 1920 Takes Place of First Assessment, 1916.

There was a reassessment in 1920 (R., 47), and the identical language as to the Prairie Pipe Line Company is as follows:

> "Prairie Pipe Line Company, 12 miles pipe line (and then) Prairie Pipe Line Company deeded (ditto) 12 miles telegraph and telephone line, $5,000.00 per mile, total $60,000.00"
>
> "Q. Didn't that take the place of this one (the original assessment of 1916)?
>
> "A. Well, yes, it follows that if a reassess-

ment was made, the first one was out of order'' (R., 46).

The reassessment was filed July 24, 1920 (R., 51).

Bonds Issued by the Commissioners.

The first bond issue of $223,000 was contracted December 5, 1916.

Along in 1917 all litigation was over, and I think the act had been separated, that issue was taken up and another issue of $177,000 added to it, so as to make the total $400,000. That was done March 24, 1917.

There was another bond issue of $40,000, August 5, 1919. Then there was a fourth issue later on, as money was needed, $60,000, September 24, 1920. There was a fifth issue of $40,000, making altogether $540,000, and of this there is outstanding $350,000 (R., 44-45).

At the time this case was tried, April 21 and 22, 1925 (R., 32), it was thought that Act Number 83, approved February 14, 1925 (see appendix of this brief), which gave the Board additional power and authorized unlimited bond issues and the rebuilding of all roads with concrete, asphalt or other hard surface, being a special act was void on account of a Constitutional amendment, which had been voted upon at the General Election of 1924, but it turned out that the amendment had failed (see case of McAdams *vs.* Kenley, 169 Ark., 97), and therefore the act is still in full force and effect.

A. B. Little.

A. B. Little was introduced as witness for petitioner (appellee) and testified that he had occupied the posi-

tion of assistant tax collector of Miller County, Arkansas, during the years from 1915 to 1917, and he introduced the correspondence between the tax collector's office and the Tax Commissioner Van Tuyl of the Pipe Line Company, of Independence, Kansas, showing that he (the deputy), in making up the statement of taxes for said company for the year 1916, had overlooked the item of $395.20, road tax, of which Mr. Van Tuyl had no previous knowledge, and the subsequent year he also overlooked the same. Also through this witness there was read in evidence the statement made by the collector to Mr. Van Tuyl that the entire amount of road tax would be paid out in 15 years, at the rate of $395.20 per year (R., 71).

There were three payments of taxes, based upon this information by Mr. Van Tuyl. Subsequently, in 1921, Mr. Black, his successor, ascertained there was a general reassessment of benefits, in which the taxes were increased (R., 112). Then he brought action in the Chancery Court to enjoin the collector from refusing to receive the general taxes without the special taxes, and was successful in a decision (Eason *vs.* Prairie Pipe Line Company, 149 Ark., 669), requiring the collector to receive such general taxes, notwithstanding that provision in both Act 153, Section 10 (R., 176-7), and Act 15, Section 9 (R., 90), which subjected the collector to the penalty of $100, if he did not collect the special tax without the general tax, and would penalize the taxpayer to the extent of 25 per cent of his general taxes.

APPENDIX

Showing Four Legislative Acts Relating to Miller County Highway & Bridge District, Designated by Nos. 163, 15, 16 and 83.

Act 153, entitled, "An Act to Lay off and Establish part of Miller County into a public highway and bridge district, for the purpose of construction of public highways, from the city of Texarkana, to the various localities in the territory, hereinafter described, and for the construction of public bridge in connection with such highways over and across Red River, between Fulton and Index." Section 1 fixes the boundaries of the District, which includes the North Half of Miller County, and fixes its name as "Miller County Highway & Bridge District," and provides that it shall be a public agency and a body politic, incorporate, *and that it shall have perpetual succession* (R., 170).

Section 2, provides that the District shall have power to construct and maintain 60 miles of free public highways, of such material as it shall deem best, leading from the city of Texarkana, to such points on Red River, between Fulton and Index at which it may deem desirable and suitable to construct a bridge over and across said river, and said district shall have power to construct and maintain a free public bridge in connection with said highways over and across said Red River.

Section 3 provides that the affairs of the district shall be managed and controlled by a commission composed of three land owners, residents of the district.

Sections 4, 5, and 6 confer power for the formation of plans and construction of the proposed improvements.

Section 7 reads as follows:

"SECTION 7. Immediately after ascertaining the cost of the public improvement contemplated by this Act, the commission shall appoint three assessors, who shall reside in the district; each of said assessors shall, before entering upon the discharge of his duty, take an oath to well and truly assess to the best of his ability the value of all benefits to be received by each land owner by reason of the proposed improvement, as affecting each tract of land in said district. They shall ascertain the value of the real property within said district without said improvement, and also the value of all the roads, tramroads, street railroads, electric light and water plants, rights-of-way, telephone and telegraph lines, pipe lines, and all other franchises *of whatsoever description, in any manner* connected with the realty in said district, *without said improvement, and the value thereof as benefited by said improvement, and shall charge against each lot, tract or parcel of real estate, railroad, tramroad, street railways, electric light and gas plants, water plants, rights-of-way, telephone and telegraph lines, pipe lines, and all other franchises whatsoever connected with the realty in said district*, an assessment according to the value of the benefit that will accrue to it by reason of the construction of said highways and bridge.

"The Board of Assessors shall within one hundred and twenty (120) days after their organization complete their duties by filing with the commission a list showing the description of the property of the district, the owners'

names as far as same appear from the last county assessment, and such corrections as they may ascertain should be made, *and the valuation* of each lot, tract or parcel of land, railroad, street railway, gas and electric light plant, water plant, tramroads, telephone and telegraph lines, pipe lines and all other franchises of whatsoever description in any way connected with the realty in said district without the improvement, *and the valuation with the improvement, and the benefit* estimated to accrue to each lot, tract or parcel of land, railroad, tramroad, street railway, gas and electric light plant, water plant, telegraph and telephone lines, pipe lines and all other franchises of whatsoever description in any way connected with the realty in said district by reason of the improvement; and shall file the same with the county clerk of Miller County for the inspection of all persons interested. Notice of the filing of said assessments shall be given by publication in one newspaper published in Texarkana, Arkansas, and said notice shall set a date not less than thirty days distant, and the place where any complaint may be made by any land owner, railroad, tramroad, street railway, gas and electric plant, water plant, telegraph or telephone line, pipe line or any franchise whatsoever in any way connected with the realty in said district before the Board of Assessors of any assessment made against his or its property.

"The said Board of Assessors shall correct any inequality, injustices, or errors, which they may find in the assessment, and shall hold meetings for the purpose of hearing the complaints

of the owners of any such property in said district as to said assessment, and *shall increase or decrease the assessment* so as to adjust the burden of the assessment to the benefit to accrue to the real property. Provided, *that in reassessing the benefits for the making of said improvements, the assessors shall never diminish the total amount of the assessed benefits in case said district shall have incurred debts.* The Board of Assessors may adjourn from day to day until the hearings are completed. Any property owner as aforesaid, aggrieved by the action of said Board of Assessors, may take an appeal to the commission within thirty days from the action of the Board of Assessors upon his complaint; or any other property owner aforesaid may appeal from the action of the Board of Assessors from any assessment which acts unequally upon his property.

"The commission shall hear all appeals and determine the same, and appeals may be taken from the commission to the County Court in the same manner as is now provided by law *that appeals may be taken from the county equalization board to the County Court*, which said appeals shall be taken within thirty (30) days from the action of the commission complained of.

"The assessors shall be paid the sum of three ($3.00) dollars per day for the time actually engaged by them in the discharge of the duties of their office.

"When the assessors have completed their work, and all appeals therefrom have been heard by the commission, the commissioners shall then equalize the assessment so as to equalize and

adjust all assessments to the benefit to accrue to each lot or parcel of real estate, railroad, tramroad, street railway, gas and electric light plant, water plant, or right of way, telephone or telegraph line, pipe line, or any other franchise whatsoever, connected with the realty of said district assessed, which said equalization shall be completed within thirty days after the time for appeal from the Board of Assessors has expired."

The words underscored in first paragraph of Section 7 are omitted in said paragraph, as copied at page 173 of the record, but the foregoing copy is correct, as will be shown by reference to Acts of the Legislature, 1915, pp. 624-625.

Section 8 provides that as soon as assessments have been equalized, the commission shall charge each lot, tract of real estate, railroad and utilities with an assessment equal to the *benefit* estimated in the said assessment list to accrue to such land, etc.; and shall apportion such assessment in annual installments, so as to realize annually only such sum of money as will be necessary to meet the expenses incurred, and a sinking fund to pay the bonded indebtedness, *and for such improvements and maintenance as the commission shall determine shall be paid from the assessment annually,* "provided that the improvements herein undertaken shall not exceed 15% of the valuation of the real property in said District, subject to improvement district assessment, as ascertained by the State and County assessments of said property for the year next preceding the time when the assessment herein provided for may be made, *provided, however, that this limitation of 15% of valuation shall not prevent an annual assessment, as hereinafter provided, for the*

maintenance of the improvement after the cost of the construction has been paid."

Section 8 further provides that all railroads, pipe lines and other utilities connected with the realty of said territory, shall be assessed according to the *betterments and increase in value*, in like manner as herein prescribed for real estate, *except that said assessments shall be made per mile.*"

Section 9 provides that the assessments shall be declared a lien upon all the assessed property in the district, ahead of all other liens, and shall continue until such assessments with any penalties and costs which may accrue thereon may be paid.

Section 10 provides that the board shall annually before the first of September, determine the amount of taxes which may be required for the succeeding year, and enter upon its records, an order levying the same upon the benefits to the property of the District, subject to taxation thereunder.

Said section further provides that "the amount of taxes herein provided for shall be annually extended upon the tax books of the county and collected by the collector of the county along with other taxes," and "if any collector shall fail to collect the road tax, along with the other taxes, he shall be subject to a *penalty of $100*, for each instance in which he shall collect from an individual the other taxes and omit the road tax, unless the road tax has been enjoined by a court of competent jurisdiction, to be recovered by a suit brought by the commissioners to the use of the district; and the county clerk shall be subject to a like penalty for each case in which he shall fail to enter the road tax upon the tax books" (R., 177).

Section 11 provides for borrowing money and issuing bonds to make the improvements.

Section 12 provides for the payment of taxes between the first Monday of January and the 10th day of April of each year, and requires the collector to report all delinquencies for nonpayment, and to add a *penalty of 25 per cent*, and said section provides that the board of commissioners shall enforce the collections by Chancery proceedings in the Chancery Court of Miller County, and that the court shall give judgment for the amount of taxes and penalty and interest, and the method of procedure is prescribed (R., 177-179).

Sections 13 to 37 provide for the sale and redemption of property, and the conduct of the business of the board.

Act 15.

"An act to amend act number 153 of the Acts of the General Assembly of the State of Arkansas, of the year 1916, being an act forming the Miller County Highway and Bridge District." The whole of act 153 is amended by this Act No. 15, and Section 1 embraces the same territory as in Act 153, and a small quantity of land located in the adjoining counties, which had been cut off by Red River, and said section further provides that said territory "be and the same is hereby created and constituted a highway and bridge district, and said district shall be known as 'Miller County Highway and Bridge District,' and shall be a public agency and a body politic, incorporate under said name and style, and they may sue and be sued, plead and be impleaded, and *have perpetual succession* for the purposes hereinafter designated" (R., 185).

Section 2 provides that said district shall have power to construct 75 miles of *free public highways*, of such material as they may deem best, consisting of two

main lines, from the city of Texarkana, northerly to the Red River and from said city easterly to said river, with such branches as they may deem advantageous.

Section 3 provides for the appointment of three commissioners, naming the same, to manage the district.

Sections 4 and 5 provide for the organization of the board of commissioners, and authorizes them to form plans and to construct the improvements.

Section 6 is as follows:

> "Section 6. *The assessment heretofore made by the assessors for said district is hereby ratified and confirmed as the assessment of the benefits which will accrue* from the making of the improvements herein contemplated, and the assessors heretofore named by the board shall proceed to make a similar assessment upon the lands in Hempstead and Lafayette counties hereby added to this district.
>
> "If the board changes its plans of improvement, it shall file such changed plans with the county clerk of Miller County, *and if either the board of any individual thinks that, by reason of said changes in the plans, the assessment heretofore made has become inequitable, a new assessment of benefits shall be ordered by the board*, and the board may, not oftener than once a year, order a re-assessment of the benefits in the entire district; *but in no event shall the total amount* of the assessed benefits within the district *ever be diminished;* and if any *future assessment* should be for an amount less than the preceding assessment of benefits, such assessment shall be *void*, and the preceding assessment shall continue in force.

"The assessment of the lands in Hempstead and Lafayette counties hereby added to the district shall be made in the same book as the present assessment and in the same manner.

"Future assessments of benefits shall be made in books to be furnished by the board, which shall show the lands of the district as they appear on the county tax books, such corrections as may be necessary, and shall also show the railroad, street railway, gas and electric light, water tramroad, telephone, telegraph *and pipe lines by the mile*, and also all other franchises of whatever description in any way connected with the realty in the district. Opposite each piece of property shall be placed the name of the owner, if known to the assessors, and the *amount of the betterments*. Such assessment shall be filed with the county clerk of Miller County for the inspection of all persons interested; and upon its filing, the secretary of the board shall give notice by publication in a newspaper published in Texarkana, Arkansas, that the assessment has been filed, and shall set a date not less than thirty days distant and a place where any person interested may appear before the Board of Assessors and complain of the assessment of his property or of the assessment of any other property in the district.

"At the time fixed in said notice the Board of Assessors shall meet and shall hear the complaints of property owners, and shall increase or decrease the assessments so as to adjust the burden thereof to the benefits that will accrue. The Board of Assessors may adjourn from day to day until the hearings are completed. Any property owner aggrieved by the action of the

Board of Assessors may appeal to the commission within thirty days; and the commission shall meet at some convenient time and hear all appeals and determine the same, and *their decision shall be final.* The assessors shall be paid the sum of three dollars ($3) per day for the time they are actually engaged in the discharge of their duties" (R., 187-189).

Section 7 attempted to ratify and confirm all the acts of the commissioners of said Miller County Highway & Bridge District, and all their agents in so far as they have acted by the authority of the commissioners, and all acts of the assessors of said district are ratified and confirmed, *particularly* the action of said commissioners in levying taxes upon the assessed benefits in said district, by their resolution adopted on the 5th day of December, 1916, and their action in issuing bonds of said district amounting to $223,000.00, and their action in settling with railroads; and it is further provided in Section 7, "that the improvement authorized by this Act shall not cost more than ten per cent of the value of the real property in said district as authorized by the last State and county assessment made before the particular work is undertaken; but interest shall not be computed as part of such costs." And "If, in the future, the assessed value of the property in the district shall be increased, and the power of the board to expend money for improvements shall increase proportionately, *and the board shall have the authority to levy further taxes in excess of the ten per cent limit herein prescribed, for the purpose of making necessary repairs upon the highways improved by it*" (R., 189).

It is provided by the Section 8 that the assessors hereby appointed shall continue to be the assessors

of the district until discharged by the board, which may appoint their successors from time to time.

Section 9 provides that the assessment shall be a charge and lien against all real estate in the district, from the date of said resolution, and shall be entitled to preference over all judgments, executions, incumbrances, or other liens whatsoever, and shall continue until such assessment, with any penalties and costs which may accrue thereon, shall be paid.

By Section 10, it is provided that whenever the board shall issue any bonds, it shall levy upon the assessed benefits, a tax, payable through a series of years until the maturity of said bonds, of an amount sufficient to pay said bonds with interest as they mature; and may pledge and mortgage said levy to secure payment of such bonds.

Section 10 further provides for penalty of $100.00 against the collector, should he receive the general taxes without payment of the special tax, and a like penalty against the County Clerk for each case in which he shall fail to enter the road tax on the tax books. The balance of said Act, from Section 11 to 22, inclusive, provides for the collection of the delinquent taxes, and penalty, and for the administration of the affairs of the district.

Act 16.

An Act to create Red River Bridge District.

The original act 153, provided for the building of 60 miles of road and a bridge. This was amended by Act 15, to provide for the building of 75 miles of highway without the bridge.

Act 16 creates a separate district, embodying the same territory as in the other acts, for the purpose of building a bridge across Red River. This bridge was built at Index, and a special Improvement district

tax was authorized to be assessed and was assessed against all property in the district, including the pipe line, to pay for the cost of the bridge.

Act Number 83.

AN ACT in Aid of Miller County Highway and Bridge District.

SECTION—

1. Commissioners may pave, cost, amount of tax.

2. Amends Section 6 act 15 of 1917 assessments, notice, appeals.

3. Amends Section 10 act 15 of 1917, extension of tax, collection.

4. Interest on benefits assessed.

5. All cases advanced in all courts.

6. Sale of lands.

7. Assessment confirmed.

8. Emergency, in force from passage.

WHEREAS, the Miller County Highway and Bridge District has constructed its roads of gravel; and

WHEREAS, it has been found that the expense of maintaining gravel roads under the heavy traffic now passing over the road running north from Texarkana along the State Line is so great that it would be to the interest of the district to pave said road with concrete; and

WHEREAS, with the growth of the community, similar conditions will arise in other portions of the district:

Now Therefore be it Enacted by the General Assembly of the State of Arkansas:

SECTION 1. The board of commissioners of the Miller County Highway and Bridge District *are hereby authorized to pave with concrete, asphalt or other hard surface deemed by them most advantageous, any road of the district heretofore constructed* which they find will require such hard surface in order to carry economically the traffic thereon. Plans for such hard surface roads shall be made by the board and filed with the county clerk of Miller County and notice thereof given by publication for one insertion in some newspaper published in the City of Texarkana.

The *cost of the improvement* authorized by this act shall *not exceed fifteen (15%) percent of the value of the real property* as shown by the *last county assessment made before the work is undertaken; but interest shall not be computed as part of the cost.*

The total present assessment of benefits in the aggregate shall never be diminished and the rate of taxation shall never exceed ten (10) mills per annum on the assessment of benefits; but in no year shall a tax be levied, which with the sums derived from the gasoline and automobile tax and other sources, will exceed the amount necessary to pay the bonds and interest maturing during the succeeding twelve months and such sums as may be necessary for repairs, *the whole tax never to exceed ten (10) mills on the assessment of benefits.*

SECTION 2. The *last paragraph of Section 6 of Act No. 15* of the Acts of the General Assembly of the State of Arkansas of the year 1917, entitled, "An Act to amend Act No. 153 of the Acts of the General Assembly of the State of Arkansas of the year 1915, being an act forming the Miller County Highway and bridge district," *approved January 29th, 1917,* be amended to read as follows:

At the time fixed in said notice, the board of assessors shall meet and shall hear the complaints of prop-

erty owners, and shall increase or decrease the assessments so as to adjust the burden thereof to the benefit that will accrue. The board of assessors may adjourn from day to day until the hearings are completed. Any property owner aggrieved by the action of the board of assessors may appeal to the chancery court of Miller County within thirty (30) days after the adjournment of the board of assessors, and not thereafter, for a revision of his assessment. The assessors shall be paid the sum of three ($3.00) dollars per day for the time that they are actually engaged in the discharge of their duties.

SECTION 3. The last paragraph of Section 10 of said Act shall be amended to read as follows:

The amount of taxes herein provided for shall be annually extended upon the tax books of the county and collected by the collector of the county along with other taxes; and for his services in making such collection the collector shall receive a commission of one (1%) per cent; and the collections shall be paid over by the collector to the treasurer of the district at the same time he pays over the county funds. No property owner shall be allowed to pay his state and county taxes unless he pays his road improvement taxes; and if any collector shall fail to collect the road tax along with the other taxes, he shall be subject to a penalty of $100 for each instance in which he shall collect from an individual the other taxes and omit the road improvement tax, unless the road improvement tax has been enjoined by a court of competent jurisdiction, to be recovered in a suit brought by the commissioners to the use of the district and the county clerk shall be subject to a like penalty for each case in which he shall fail to extend the road improvement tax upon the tax books.

SECTION 4. *The assessment of the benefits of said Miller County Highway and Bridge District now on file and any other assessment of benefits, which it may make, shall bear interest at the rate of six (6%) per cent per annum. Collections shall first be applied to the interest; but interest need not be calculated until necessary to avoid collecting more than the total assessed benefits with interest.*

SECTION 5. All suits to restrain the commissioners of said district from proceeding with any work, or to restrain the collection of any taxes of said district, and all suits brought by the district to collect its taxes, and all suits questioning the authority of any of the officers of said district or their right to their positions, shall be deemed matters of public interest and shall be advanced in all courts, and shall be heard at the earliest possible moment; and all appeals therein must be taken and perfected within thirty (30) days.

SECTION 6. When lands have been sold in proceedings to enforce the collection of the taxes of said district, the owner thereof shall have two years from the date when they are stricken off by the commissioner making the sale in which to redeem therefrom.

SECTION 7. It is ascertained and hereby declared that the assessment of benefits of said district is just, equitable and proportionate, and the same is hereby ratified and confirmed and shall stand as the assessment of benefits of said district until a new assessment is made in the manner provided by the said act No. 15 of 1917.

SECTION 8. This act being necessary for the immediate preservation of the public peace, health and safety an emergency is hereby declared, and the act shall take effect and be in force from and after its passage.

Approved: February 14, 1925.

IN THE SUPREME COURT OF THE UNITED STATES

In the Matter of the Petition of STANDARD PIPE LINE COMPANY, INC., for Writ of Certiorari, Directed to the United States Circuit Court of Appeals for the Eighth Circuit, to Bring Before the Supreme Court of the United States the Case of Miller County Highway & Bridge District, Appellant, *vs.* Standard Pipe Line Company, Inc., Appellee.

And now comes the petitioner herein, Standard Pipe Line Company, Inc., and moves the court upon certified copy of the transcript of the record herein, and upon the annexed petition for writ of certiorari, directed to the United States Circuit Court of Appeals for the Eighth Circuit, to bring before this Honorable Court the above styled case, decided by the United States Circuit Court of Appeals for the Eighth Circuit, for such proceedings therein as to this court may seem just, and for such other and further relief as may be just.

T. M. MILLING,
W. H. ARNOLD,
W. H. ARNOLD, JR.,
DAVID C. ARNOLD,
Counsel for Petitioner.

SEPTEMBER 17TH, 1927.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 577.

STANDARD PIPE LINE COMPANY, INC.,
PETITIONER,

vs.

MILLER COUNTY HIGHWAY AND BRIDGE DISTRICT, RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

CASE ORIGINATED IN THE DISTRICT COURT OF THE UNITED STATES, WESTERN DISTRICT OF ARKANSAS, TEXARKANA DIVISION.

ARGUMENT AND BRIEF IN BEHALF OF PETITIONER.

The judgment of the United States Circuit Court of Appeals for the Eighth Circuit, review of which is

sought in this proceeding, was rendered April 18, 1927 (R., 251). Motion for rehearing was filed June 6, 1927; denied July 12, 1927 (R., 252). See opinion of the United States Circuit Court of Appeals for the Eighth Circuit (R., 244-251), Fed. Rep., Vol. 19, 2d Ed., page 3. Petition for writ of certiorari from the Supreme Court of the United States to the United States Circuit Court of Appeals for the Eighth Circuit was granted herein (R., 252). under paragraph (*a*) of Section 240 of the Judicial Code as amended by Act of February 13, 1925 (43 Stat., 939), providing for the granting by this Court of writs of certiorari to the United States Circuit Court of Appeals.

The Bill.

The petitioner, the Standard Pipe Line Company, Inc., alleged that it is a corporation duly chartered, organized and doing business under the laws of the State of Louisiana, and that it was at all times mentioned in the bill a citizen and resident of the State of Louisiana, and that the defendant, the Miller County Highway and Bridge District, is a corporation organized and existing under and by virtue of Special Act No. 153 of the Acts of the Legislature of the State of Arkansas for the year 1915, and as amended by Act 15 of the year 1917, and that said defendant (respondent) is a resident citizen of Miller County, Arkansas, and of the Texarkana Division for the United States District Court for the Western District of Arkansas, and that said defendant is a body politic capable of suing and being sued; that the amount in controversy in

this cause, exclusive of interest and cost, exceeds the sum of $3,000, "and that the acts hereinafter complained of, with reference to this complainant and its property, are in violation of the rights guaranteed to it by the provisions of the Constitution of the United States" (R., 9).

By paragraph 4 of the bill it is alleged that the defendant, the Miller County Highway and Bridge District, was created as a body politic for the purpose of constructing public highways within the boundary of said district, as defined by said Acts of the General Assembly, and defendant had constructed certain highways in said District (R., 9). By paragraph 5 of the bill it is alleged that said acts provide that said Miller County Highway and Bridge District shall be managed and controlled and all improvements authorized shall be made by a Commission whose names are given.

By paragraph 6 of the bill it is alleged that said special Act No. 153 provided that "said Commissioner should appoint three assessors, whose duty it shall be to ascertain the value of the real property within said district, without said improvements, and also the value of all the roads, tramroads, street railroads, electric light and water plants, rights of way, telephone and telegraph pipe lines, and all other franchises of whatsoever description, in any manner connected with the realty in said district without said improvement, and the value thereof as benefited by said improvement, and shall charge against each lot, tract or parcel of real estate, railroad, tramroad, street railway, elec-

tric light and gas plants, water plants, rights of way, telephone and telegraph lines, pipe lines, and all other franchises whatsoever connected with the realty in said district an assessment *according to the value of the benefit that will accrue to it by reason of the construction of said highways* (R., 10).

By paragraph 7 it is alleged that the assessors were duly appointed by the Commissioners, whose duty it was to file with the Commissioners a list showing the description of the property of the district, the owner's name as far as same appears from the last county assessment, and such correction as they may ascertain should be made, and the valuation of said properties above mentioned without the improvement and the valuations of said properties with the improvement, and the benefit estimated, to accrue to each lot, tract, or parcel of land, railroad, tramroad, street railway, gas and electric light plant, water plant, telegraph and telephone lines, pipe lines and all other franchises whatsoever (R., 10).

By paragraph 8 of the bill it is alleged that the respondent, the Standard Pipe Line Company, Inc., is engaged solely in the business of transporting for hire crude petroleum oil by means of pipe lines laid beneath the surface of the earth, and in the operation of said business it has and owns, maintains and operates a pipe line extending from the State of Oklahoma, through the State of Arkansas, to and through the State of Louisiana, and that it has a line of pipe entering the defendant's road district at a point in the south line of Section Thirty-one (31), Township Fifteen (15)

South, Range Twenty-seven (27) West, and running in a northwesterly direction to Mandeville and continuing in the same general direction to Red River. A plat or map showing the boundaries of the road district and the location of the roads and the pipe lines of the respondent is attached to the bill. It is alleged that the Standard Pipe Line Company is a common carrier for hire, engaged solely in interstate commerce, and that in connection with said pipe lines it owns and maintains a telegraph line, which said line is a necessary incident to the business of transporting crude petroleum oil by means of pipe lines, and that said telegraph line is used only in connection with the said business; that the defendant transports no products to or from the State of Arkansas, and in substance alleges that it does no local business (R. 11-12). It then states "*that its said pipe lines are not and cannot be benefited by any improvement which does not prolong the life of its lines or increase the amount of the commodity which it transports through its said lines;* and that the business of this complainant is not in any way affected and is neither increased or decreased by the development, advancement or improvement in that part of the State of Arkansas through which its said pipe lines run, and that the amount of its business and the amount of its revenue solely depends upon the transportation and movement of a commodity which is received in Oklahoma and transported through the State of Louisiana, and which is not in any way affected by any highways or bridges that may be constructed in the territory of Miller County Highway and Bridge

District, or any other improvement therein; that the material of the pipe lines of this complainant is made of rolled steel, which is buried in the ground, which, in accordance with the very nature of things, has a tendency to return to its native state, due solely to the acts of the elements of nature, and that the construction of the highways and bridges will in no way prolong the life of the pipe lines or increase its (value or its) carrying capacity" (R., 12).

By paragraph 9 of the bill it is shown that it does not own the land through which it runs, but merely has a permit to lay, operate or remove the pipe lines, under a contract with the land owners (R., 13).

By paragraph 10 of the bill it is alleged that the assessors of the district, appointed by the Commissioners, "divided the lands in the district into zones, determined by the distance of said lands from the highway and assessed uniform benefits upon all lands within the same zone without regard to improvements thereon or market value thereof; that said assessors in assessing the land in the first zone assessed the benefits at $30 per acre, and on the lands located in the second zone they assessed the benefits at $25 per acre, and on the lands in the third zone they assessed the benefits at $20 per acre; that said assessors assessed the benefits on telephone and telegraph lines at from $200 to $250 per mile; and that said assessors, under the pretended authority of said acts of the General Assembly of the State of Arkansas, did attempt to assess a benefit to the said pipe lines which are the property of this complainant, and that although the

said pipe lines are personal property, and although the said board of assessors had assessed the benefits by reason of said improvements to the lands through which said pipe lines are laid, and that although said improvement would not in any way or manner prolong the life of said pipe lines, nor in any way or any manner increase their carrying capacity, nor in any way or any manner increase the revenue to be derived therefrom by the owners thereof, did under the pretended authority of said acts attempt to assess a benefit against the pipe lines so owned by this complainant, and that said board of assessors, so acting as aforesaid, without any designated basis, and without considering the location of said pipe lines with reference to the location of the highways to be constructed, systematically, intentionally, unlawfully and in violation of the provisions of Article 5, Section 16, of the Constitution of the State of Arkansas, and in violation of the provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States, did assess a benefit to said pipe lines at $5,000 per mile, and did wrongfully, fraudulently, systematically and intentionally and in violation of the provisions of the Constitution of the State of Arkansas and the provisions of the Amendments to the Constitution of the United States, as aforesaid, assess benefits to 12 miles of pipe and telegraph line now belonging to this complainant at an aggregate assessment of $60,000, all of which is wholly unwarranted and a flagrant abuse, grossly disproportionate and palpably arbitrary, and in discrimination against the property of this com-

plainant and in violation of its rights and to its injury, and by reason of its arbitrary character it is a confiscation of the said property of this complainant and in violation of its rights and property guaranteed to it by the said provisions of the Constitution of the United States" (R., 14).

Complainant further alleges "that in making said attempted assessment of benefits against the pipe line of this complainant, the said board of assessors did systematically and intentionally discriminate against it and in favor of the owners of land within said district and did attempt to assess a benefit to the personal property of this complainant, whereas the personal property of all owners of real estate in said district did not have benefits assessed against it. • • • And that the same constitutes fraud and is in violation of the rights of this complainant and to its injury, and in violation of its rights and property guaranteed to it by the said provisions of the Constitution of the United States" (R., 15).

By paragraph 12 of the bill it is alleged: "Complainant states that after the assessment made as aforesaid by said board of assessors, the commissioners of said defendant road and bridge district, did, by resolution, charge the pipe lines of this complainant as aforesaid with an assessment of $60,000 and said Commission did apportion such assessment into annual installments of $600 each, to be paid annually and this complainant further states that under the provisions of Act No. 153 and Act No. 15, the said assessment so made against the pipe lines of this complainant is a lien against the

said property of this complainant, and under the provisions of said acts, said lien is entitled to preference over all judgments, executions, encumbrances and other liens whatsoever and this complainant states that said board has levied a tax against the said pipe lines of this complainant based upon the said purported benefits so assessed and that said taxes have been extended upon the tax books of Miller County, Arkansas, and that the same thereby create a lien and a charge upon the said pipe lines of this complainant in the said defendant road and bridge district and that the board of commissioners of said defendant road and bridge district, unless prevented by the order of this Court, will enforce the collection of said tax by chancery proceedings in the Chancery Court of Miller County, Arkansas." And there are further allegations showing that a penalty of 25 per cent and interest will be added to said assessment, and that the lands are liable to be sold under the orders of the court for the payment thereof and that such action would take away the petitioner's constitutional rights under the Constitution of Arkansas and of the United States, and unlawfully interfere with the interstate commerce in which the petitioner is engaged, and cause the petitioner to suffer irreparable loss and injury, and become engaged in a multiplicity of actions in order to protect its rights and property (R., 18). The petitioner further pleaded that it is a common carrier engaged in interstate commerce and that the levy and collection of said tax "will interfere wtih the complainant in the performance of its duties as an interstate carrier and

would prevent it from properly continuing to operate its lines and perform its duties as an interstate carrier, all in violation of the said provisions of the Constitution of the United States" (R., 18).

By Section 14, complainant further alleged that under the purported authority of said acts of the Legislature, the commissioners of said defendant road district, unless prevented by an order from this Court, will cause an annual tax to be extended upon the tax books of Miller County, Arkansas, against the said pipe lines of this complainant on account of the assessment of benefits against it as aforesaid, which if not paid annually when due will be attempted to be collected by the commissioners of said road district by chancery proceedings in the Chancery Court of Miller County, Arkansas, together with the added penalty and interest (R., 19).

By Section 15, it is alleged in the bill, that the complainant would further respectfully show to the Court that in so far as the acts of the Legislature of the State of Arkansas attempted to authorize a benefit assessment to be made against the said pipe lines and telegraph lines of this complainant as aforesaid, it was wholly unconstitutional and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States and a flagrant abuse of legislative authority and by reason of its arbitrary character is a mere confiscation of property, for the reason that the said pipe lines and telegraph lines of this complainant located within the said defendant road and bridge district cannot and will not be in any man-

ner or to any extent benefited by the improvement provided for in said acts (R., 19).

It was further alleged in paragraph 15 of the bill that said Acts No. 153 and 15 had not afforded the complainant an adequate remedy for the correction of said assessments (R., 21), and it was further alleged as follows: "the attempted assessment of said pipe lines and telegraph lines of this complainant were wholly unwarranted and unlawful, the pretended remedies for appeal provided for in said acts would not and does not afford to this complainant full and complete relief and it therefore has no adequate remedy at law."

Plaintiff (petitioner) alleges that the assessment of alleged benefits is void for the reason that the description of the property in the assessment of alleged benefits is so vague, indefinite and uncertain that the property cannot be found, identified or located, the property being described as "12" pipe lines, "12" telegraph and telephone lines, and an assessment of $5,000 per mile, or $60,000, is extended against the same (R., 21).

The petitioner further alleged "that neither it nor the Prairie Pipe Line Company, from which plaintiff purchased the property in Arkansas and which was the owner thereof at the time of the filing of said assessment of alleged benefits, both companies being nonresidents of the State of Arkansas, had knowledge of the filing of the alleged benefits, and the plaintiff (petitioner) purchased the said lines without any knowledge of the said assessment of the alleged benefits, and neither the plaintiff nor the Prairie Pipe Line Company had opportunity to contest said assessment,

having no notice thereof until long after the time for appeal had expired, and plaintiff further alleges that the secretary of the board of said district did not publish the notice required by law of the filing of said assessment of alleged benefits, and no notice was published which was sufficient to put the plaintiff (petitioner) or its predecessors in title on notice that its lines within the boundaries of the district were included in said assessment of benefits, and plaintiff (petitioner) denies that it was by the provisions of said acts afforded complete relief, and alleges that it had not and does not now have adequate remedy at law" (R., 22).

The prayer of the bill is that defendant be perpetually enjoined and restrained from attempting to enforce the collection of said tax provided for in said legislative acts (R., 23). And, furthermore, complainant prayed for general relief (R., 23).

The Answer.

The defendant, Miller County Highway and Bridge District, filed answer April 2, 1925, admitting that no oil produced within the State of Arkansas is being transported through said pipe lines within said district, and admits that said pipe lines are laid, maintained and operated, through and under land owned by persons other than the plaintiff, but alleges that the plaintiff has a right of way through and under said lands giving it the exclusive right to lay, operate, maintain, and repair said pipe lines, and that under the laws of the State of Arkansas that said pipe lines are real

estate and subject to the assessment of benefits in behalf of defendant road and bridge district (R., 26). Defendant admitted that the land within the district was divided into zones and assessed at $30 per acre in the first zone, $25 per acre in the second zone and $20 per acre in the third zone, and states that the total assessment of benefits made by the assessors, after due consideration, against the pipe lines of the plaintiff located within said road district amounted to an aggregate assessment of $60,000.

This defendant denies that said assessment is unwarranted, arbitrary, or discriminatory or in violation of any rights guaranteed to the plaintiff under the Constitution of the United States (R., 26).

The defendant further alleged: "The first assessment of benefits was made and filed by the assessors, and afterwards a reassessment of benefits was made by the assessors against the various lands, railroads, pipe lines, telegraph and telephone lines situate within the said district, and was filed by said assessors with the county clerk of Miller County, Arkansas, on or about April 24, 1920 (R., 26). This defendant states that such reassessment of benefits was the same as the original assessment save only a change of assessment of certain land due to changes in the location of the roads as built by the Commissioners; that is, the assessments against lands within the various zones according to their proximity to said several roads was raised or lowered according to the distance of the lands from the roads, as said roads were finally located and built (R., 27). The defendant then alleged "that the

assessment of benefits against the pipe lines and telegraph lines and property of the plaintiff was not changed in said reassessment and said assessment of benefits against plaintiff's pipe lines, telegraph lines under Section 6 of act No. 15, passed by the General Assembly of the State of Arkansas during the year 1917, was ratified and confirmed, that no action was taken by the plaintiff for many years to contest said assessment of benefits as made and ratified by the legislature of Arkansas, and that the plaintiff is now estopped from contesting said assessment of benefits" (R., 27). The plaintiff is barred by limitation under the laws of the State of Arkansas from now contesting said assessment and this defendant specially pleads the various statutes of limitation as a bar to the plaintiff's action (R., 27).

By paragraph 12 of defendant's answer it is alleged that "This defendant states that originally the annual installment for road purposes to be collected from the plaintiff was $600, one per cent of the total assessment; that because of the passage of the Harrelson Act by the State of Arkansas said assessment has been reduced and through changes in the road laws of the State of Arkansas it is possible and probable that additional reductions in the annual installment to be collected from the plaintiff as well as all other landowners within the district will be made" (R., 28).

The defendant denies that its action in the assessment in the collection of said taxes will interfere with interstate commerce and with transportation and interstate commerce, alleged to be conducted by the plain-

tiff; and denies that plaintiff will suffer irreparable loss and injury because of any suit or suits that may be brought by defendant against plaintiff (R., 28).

By paragraph 14 the defendant denies that the collection of the annual taxes authorized by said legislative acts against the pipe lines of the plaintiff in said road district will be in violation of the constitution of Arkansas or of the United States, and that plaintiff will suffer irreparable loss and injury because of suits to be annually brought by defendant for road assessment taxes, justly and legally due by the plaintiff (R., 29).

By paragraph 15 it is denied that said pipe lines and telegraph lines will not be benefited by the roads of the district. "This defendant alleges that access to said pipe lines and telegraph lines for inspection, repairs, maintenance, and rebuilding is of a benefit to the plaintiff and to said pipe lines and telegraph lines" (R., 29).

By paragraph 16 of the answer it is alleged "that by pursuing the remedies allowed under the laws of the State of Arkansas, full relief could have been had, if any illegal or unwarranted assessment of benefits had been made against any property of the plaintiff" (R., 29).

By paragraph 16 of the answer it is denied "that the description of the property of the plaintiff assessed for road purposes is vague, indefinite and uncertain; and denies that the property cannot be found or identified, but states that the property assessed is the pipe lines and telegraph lines located on right of ways con-

trolled by the plaintiff over, under, and across lands within the road and bridge district (R., 30).

By paragraph 18 of the answer the defendant alleged: "The benefits assessed against the plaintiff's pipe lines and telegraph and telephone lines was confirmed by Act No. 15, passed by the General Assembly of the State of Arkansas during the year 1917; that the reassessment made during the year 1920 did not affect the plaintiff's property, and only affected a small portion of land within the district, due to changes in the roads, placing certain lands in zones close to said roads and other lands in the more distant zones" (R., 31). This defendant alleges that for more than seven years after said original assessment of benefits was made, no action was taken by plaintiff to contest same; that the plaintiff is now estopped at law to contest the validity of said assessment (R., 31).

Defendant then alleged: "That, in accordance with the terms of the act creating the district and the amendatory act thereto, any property owners aggrieved by the action of the board of assessors may take an appeal to the commissioners of Highway and Bridge District within thirty (30) days, and any property owner thus aggrieved may take an appeal from the decision of said commissioners to the *County Court of Miller County* within thirty (30) days after the decision of said commissioners (R., 31).

Defendant alleges "that no appeal was taken from said assessment to the commissioners of Miller County Highway and Bridge District, and no appeal was taken from any decision of said commissioners of said Miller

County Highway and Bridge District to the *County Court of Miller County, Arkansas;* that the plaintiff has not pursued or attempted to pursue its remedy at law to obtain redress and relief from the assessment complained of, and that said plaintiff has no standing in a court of equity, and its bill should be dismissed" (R., 31).

The Specific Claims Advanced and Rulings Made in the Lower Court Which are Relied upon as the Basis for This Court's Jurisdiction.

1. This action was begun by bill in equity in the District Court of the United States for the Western District of Arkansas, Texarkana Division, May 21, 1924, by the Standard Pipe Line Company, Inc. (under the laws of Louisiana), as plaintiff, against Miller County Highway and Bridge District, as defendant, a corporation created by a special act of the Legislature of Arkansas, No. 153, approved March 5, 1915 (R., 195-211). The bill was filed to cancel an assessment of alleged benefits, on account of proposed public roads, against 12 miles of pipe line of the plaintiff and its telegraph and telephone wire, $5,000 per mile, in the aggregate $60,000. The Special Act 153 authorized the building of 60 miles of public highway in the district, and a bridge across Red River, which was the east boundary of the district. Three commissioners were appointed to manage the affairs of the district. The commissioners, by authority of the act, appointed three assessors to assess benefits arising from the proposed improve-

ment against the lands of the district, including railroads, pipe lines, and other utilities.

2. The assessors filed their first assessment of benefits, under said Act 153, April 29, 1916 (R., 48). The pipe line at that time was in the name of Prairie Pipe Line Company. Section 7 of Act 153 required the assessors to ascertain the value of the property without said improvement, and also the value thereof as benefited by said improvement. The assessors found the value of said property as $59,340 and benefits $59,340; total, $115,680 (R., 46). The assessment against 71.05 acres, owned by the company in the district upon which the pumping plant and tanks were erected, was made separately and is not involved in this case. The only question is, is the assessment against 12 miles of pipe line and one wire not in the district, used in connection with the company's business, not along the right of way, but from Mandeville to Texarkana and thence to Index, on poles of the Southwestern Telephone Company, a distance of 17 miles, worth $15 per mile? Under Legislative Act No. 15, approved January 29, 1917 (R., 212-223), the said Legislative Act 153 was superseded, and the proposed improvement was changed from 60 miles of highway and bridge to 75 miles of highway. A new assessment was authorized and made of "12 miles pipe line and 12 miles telegraph and telephone lines, $5,000 a mile, or $60,000" (R., 50), and this assessment and that property alone is involved in this case. The property of the district subject to the assessment was not required to be valued under the new Act 15 by the assessors, as it existed before the im-

provement and as it would be after the improvement, but merely the benefits were assessed, accomplishing the same result (R., 214-215).

3. The bill filed in this case attacked the assessment upon the ground that the 12 miles of pipe line and wire were not benefited by the road improvement, measured by the fact that the value of the pipe line and its business and revenues were not increased thereby; that the assessment was made without any reason or basis, and that it was palpably discriminatory and arbitrary, and its enforcement would result in taking petitioner's property without due process of law and deny to it the equal protection of the laws; that the petitioner was engaged solely in transporting crude petroleum in interstate commerce, through its pipe lines, from Oklahoma through Arkansas to the Mississippi River in Louisiana; that it received and transacted no local business in the defendant district, and that the levy of said assessment was an undue burden upon interstate commerce, and therefore void. Original bill (R., 104); amended and substituted bill (R., 8, 23).

It was further charged in the bill that the assessment of 12 miles of pipe line and telegraph and telephone line was void, as it did not describe which 12 miles of pipe line of 25.49 miles of pipe line located within the district, or which 12 miles of wire of the 17 miles in the district, were assessed. The curative Legislative Act No. 83, approved February 14, 1925, attempting to validate the assessment of benefits in the district, was inoperative, in so far as the pipe line is concerned, on

account of said misdescription and palpable discrimination (R., 21).

4. The case was tried before Hon. F. A. Youmans, United States District Judge for the Western District of Arkansas, and special findings were made sustaining the contentions in the bill, and a decree was rendered July 2, 1925 (R., 33-34), enjoining the collection of said assessments.

The circuit court of appeals reversed this judgment (Fed. Rep., Vol. 19, 2d edition, page 3; R., 244-251).

Findings of the District Court.

1. The construction of the highway has not added anything, and will add nothing, to the value of the property of plaintiff taxed for its construction and maintenance.

2. The construction of the highway of the defendant has not added, and will not add anything, to the revenue which is obtained by plaintiff by the transportation of oil through its pipe lines.

3. The levy of a tax of $5,000 a mile upon plaintiff's right of way or pipe line and telegraph and telephone wires and lines in Miller County Highway and Bridge District is not laid upon the same plan that is followed with regard to other lands in the district.

4. The said levy of $5,000 a mile is palpably arbitrary.

5. The alleged benefit to plaintiff's property by the construction of the highway is speculative and conjectural.

6. Plaintiff is not estopped from maintaining this suit.

7. The act of the legislature of Arkansas (passed on the 14th day of February, 1925, long after this suit was instituted), purporting to validate generally the levy of the tax made by the defendant upon the property in the district, is not effective to validate the levy upon plaintiff's right of way and pipe line, because, as to plaintiff's property, such levy is arbitrary (R., 33).

Thereupon the court entered a judgment perpetually enjoining and restraining the Miller County Highway and Bridge District from attempting to enforce collection of said assessments (R., 34-35).

The circuit court of appeals reversed this judgment (Fed. Rep., Vol. 19, 2d edition, page 3; R., 244).

Errors in Findings of Fact and Conclusions of Law in Opinion of United States Circuit Court of Appeals.

The petitioner contends that the judgment of the United States Circuit Court of Appeals for the Eighth Circuit was erroneous in that the effect of said judgment and opinion was to overrule each of the foregoing findings of fact and conclusions of law of the District Court of the United States, whereas said findings and conclusions should have been sustained.

This action of the Court of Appeals is the basis of the first, second, fourth, fifth, sixth, seventh, eighth, ninth and nineteenth assignments of error hereinafter presented.

In addition to the findings of the District Court, it is contended by the petitioner that the assessment of

benefits against 12 miles of pipe line (of the 25.49 miles lying in the district at the time of each general assessment in 1916 and 1920) is so vague and indefinite that the particular pipe line assessed can not be identified and distinguished as between the two parallel pipe lines then laid, and that the alleged grounds of estoppel and confirmatory acts with reference to said assessment is inoperative in addition to the fact that each of said assessments was palpably arbitrary. This is the ground for the third assignment of error hereinafter set forth.

a. The result of this case in the court of appeals was probably controlled by misunderstanding of the facts as shown by the following statement in the opinion of the court, which is the third assignment of error (R. 251), as follows: "The assessment here is what is denominated as a general improvement tax against the real property owned by appellee within the district on an *ad valorem* basis" (R., 251).

b. The court of appeals also erred in the following statement (R. 245): "Full right of appeal from the action of the assessors was given to the commission and thence to the county court." This is made the thirteenth ground for assignment of error. The court further erred in the following statement in its opinion (R. 245): "under a third act relating to this district, being Number 83 of the year 1925, the legislature declared that the assessment for benefits made by the district to be just, equitable and proportionate, and ratified the same." This is ground for fourteenth assignment of error.

c. The court of appeals erred in the following statement (R., 250): "They (the authorities) forbid us to weigh the benefits against the burdens, and require us to hold in the instant case that under all the circumstances there was sufficient justification for the legislative determination that appellee's property was benefited." This is made ground for fifteenth assignment of error.

d. The court of appeals erred in not following its own declaration of irregularity of the procedure in this assessment (R. 248), as follows: "It may be observed that the procedure by which the value of the particular property of the appellee was arrived at and the *amount of the benefits* determined, does not commend itself to us as altogether fair, nor is the tax imposed against appellee *entirely equitable* as between it and *other property owners within the district.*" This is made the sixteenth ground for assignment of error.

e. The circuit court of appeals erred in applying as ground for estoppel the following statement (R., 247): "Their predecessor in title, the Prairie Pipe Line Company, paid three or four installments of these taxes without protest." This is made the seventeenth ground for assignment of error.

The court of appeals erred in that part of its opinion in supporting its reasoning that the roads benefited the pipe line: "Other witnesses testified that on the occasion of a fire at appellee's pumping station, the Texarkana Fire Department, at its request, arrived in time to be of material assistance; that without the

good roads they would not have attempted to run and risk the damage to equipment and danger to the lives of the firemen that would have resulted" (R., 247). This is made the twelfth ground for assignment of error.

All the foregoing questions were presented and reargued in the court of appeals on the motion for rehearing.

REASONS ASSIGNED FOR REVIEW ON CERTIORARI.

This is a case of special and general importance for the following reasons:

1. The Circuit Court of Appeals of the Eighth Circuit, in reversing the judgment of the lower court, decided against appellees the question of the denial to petitioner of the equal protection of the laws and the taking of its property without due process of law, as guaranteed to it and all others by the Constitution, arising from a palpable and arbitrary assessment of alleged benefits against its pipe line and wire of $5,000 per mile, $60,000, in conflict with applicable decisions of this Court, to wit: Road Improvement District No. 1 of Franklin County, Arkansas, *vs.* Missouri Pacific R. R. Co., decided April 18, 1927, 274 U. S., 188-195; Thomas *vs.* Kansas City Southern R. R. Co., 261 U. S., 481; Gast Realty Company *vs.* Schneider Granite Co., 240 U. S., 55; Kansas City Southern Ry. Co. *vs.* Road Improvement District No. 6, Little River County, Arkansas, 256 U. S., 658-661.

The court of appeals erred in the following declaration of law (R., 250).

> "They (the authorities) forbid us to weigh the benefits against the burdens, and require us to hold in the instant case that under all circumstances there was sufficient justification for the legislative determination that appellee's property was benefited."

If benefited at all, the principal benefit would be when pipe would be relaid, not oftener than every 20 years, when the entire item of hauling will not exceed over $375 to $400 per mile. If there was a slight benefit from the use of the roads, it would not justify an assessment of $5,000 per mile, and it should have been corrected, as held in Road Improvement District No. 1, Franklin County, Arkansas, *vs.* Missouri Pacific R. R. Co., *supra,* and if there is no benefit the assessment should have been canceled, as in the cases above cited.

2. The Eighth Circuit was thought by the Judiciary Committee of the American Bar Association at its last session to be large enough for two or three circuits; and, while we do note cite authorities of this circuit as conflicting with the decisions of other districts, we call the court's attention to the conflict existing between the case at bar, as decided by the court of appeals, and the following applicable case for the court's consideration: Board of Directors of Miller Levee District No. 2 *vs.* Prairie Pipe Line Company, 292 Fed., 474, wherein the benefit against a part of the same pipe line involved in this case and in the confines

of this road district was held void by the district court, presided over by Hon. F. A. Youmans, and the Court of Appeals of the Eighth Circuit, presided over by Judge Lewis, circuit judge, and Booth and Johnson, district judges, as being problematical and speculative. In that case the legislature directly authorized the assessment of 6 per cent ad valorem upon the assessed valuation of the real estate and pipe lines within said district. It was shown that the pipe line was assessed for general taxation at more than its value, whereas improved lands in the district worth $60 to $100 per acre, and unimproved lands, worth $25 to $40 per acre, were assessed at $10 per acre and $4.50 per acre, respectively, and at from 10 to 16 per cent of their true value. These are a part of the same lands that are in Miller County Highway and Bridge District. The court said: "That these results were unfair and injurious to the defendant, is in our judgment apparent," and that the adoption of such results was "palpably arbitrary and a plain abuse." That part of the opinion which applies more especially to the present case is as follows:

> "We are further of the opinion that the evidence sustains the conclusion of the trial court that the improvement provided for under the acts creating the Levee District did not benefit the defendant or its pipe line within the limits of the Levee District. In our judgment the evidence clearly shows that the improvement did not increase either the value of the pipe line or its earning capacity. Whether the improvement might possibly in the future decrease the

> expense of upkeep and repairs was shown by the evidence to depend on so many conjectural and fortuitious circumstances as to render any such benefit purely speculative."

In this case certiorari was denied by the United States Supreme Court. Miller Levee District No. 2 *vs.* Prairie Pipe Line Company, 263 U. S., 718; 68 L. Ed., 523.

And also the following closely allied cases, which conflict with the decision of the court of appeals, in the case at bar:

> Thomas, Sheriff, *vs.* Kansas City Southern Ry. Co., 277 Fed., 708.
>
> K. C. S. Ry. Co. *vs.* May, 2 Fed. (2d), 680.

Kansas City Southern Ry. Co. *vs.* Ogden Levee District, Fed. Rep., Vol. 15, 2d Series, 637, upon the subject of correction by the commissioners or cancellation of palpably arbitrary assessments, and inadequacy of remedy provided by the statute creating the district. The drainage district involved in that case is just across the river from the present district, through which the pipe line also runs.

> Thornton *vs.* Road Improvement District No. 1, Clark County, Ark., 291 Fed., 527.

3. The case at bar is a test case, for the purpose of ascertaining the limitations upon assessors who were charged with the duty of assessing benefits in improvement districts through which pipe lines run. At present there are three cases pending in the Federal Court

at Texarkana, in which the petitioner is plaintiff, against Road Improvement District No. 7, Little River County, defendant, where 14 miles of pipe line are assessed $250 per mile, $3,500; Road Improvement District No. 6, Little River County, Arkansas, 5.5 miles of pipe line are assessed $2,500 per mile, $13,715, and Road Improvement District No. 3, Sevier County, Arkansas, 2 miles, $8,300.

In the present case it is shown that there were two parallel lines running across the district, one laid in 1909 and the other in 1915, before the district was formed, the cost of construction of which was $8,000, or $9,000 per mile. The value of the pipe line laid in 1909, with the usual depreciation of 5 per cent, would be less than $4,500 and the other 5 years' depreciation would be $6,000. Twelve miles of pipe line in this case have been assessed $5,000 per mile, which must apply to one or the other of these lines, if the description is subject to correction.

It appears in the case of Kansas City Southern R. R. Co. *vs.* Road Improvement District No. 6, *supra,* that the railroad was assessed $7,000 per mile of the main track, and the pipe line, telegraph and telephone lines were assessed $2,500 and $300 per mile.

In the case of Road Improvement District No. 1, of Franklin County, Arkansas, *et al.,* appellants, *vs.* Missouri Pacific R. R. Company, appellee, *supra,* it appears that 24 miles of railroad were assessed at $77,686, or a little over $3,000 per mile, which was confirmed by an act of the legislature. The Supreme Court held this assessment was so excessive that it was violative

of the due process clause of the Constitution, and the court held that the assessment should be reduced to not more than $15,000, or about $600 per mile.

It is submitted that since the assessments against the railroads above mentioned were considered by the Supreme Court palpably arbitrary and discriminatory, and denied to the railroads the due process and equal protection of the laws, that the same rule should be applied to the pipe line in this case, where the assessment is $5,000 per mile.

With reference to railroads, it is shown by these decisions and Thomas *vs.* Kansas City Southern R. R. Co., 261 U. S., 481, that a railroad may be benefited by roads, drains and levees, by opening up new territory and bringing products of the earth and people to the railroad for transportation, and thereby increase its revenues; but as to the pipe line, in this case, it receives no products for transportation in Arkansas, and does no local business. There are no richer lands anywhere than the Red River bottom lands in this improvement district and in the adjoining Little River County. There are four districts covering the same territory through which the pipe line runs, *viz,* for roads, a bridge, a levee and ditches. It can be seen that a benefit which would create these improvements will enrich the owners of the land, but it is different with the pipe line which lies under the earth.

4. Pipe lines are recognized and regulated (and protected from arbitrary official action) as common carriers by Federal laws, engaged in the transportation of an indispensably necessary product in universal

use, and they are chargeable with and should perform certain governmental burdens. It is a matter of special interest to the public at large and to the pipe lines that their obligations should be definitely defined and observed.

No case calls for such definition any stronger than the one now under consideration. It is especially important on account of the diversity of the methods and results of the assessments of benefits against pipe lines in local improvement districts for roads, drains, levees and bridges, especially those located in that part of the country through which the present pipe runs, a decision should be rendered herein correcting the opinion of the court of appeals, which we submit is in conflict with previous decisions of the Supreme Court of the United States and the circuit court of appeals, so that pipe lines may not be set apart, separate and distinct from other taxpayers, subject to the arbitrary and unreasonable action of assessors (who presumably wish to do right) in making their assessments without limitation, rule or guide.

The foregoing considerations and the necessity for uniformity in the decisions in the Circuit Court of Appeals of the Eighth Circuit, which are rendered nonuniform by the case at bar (which can only be accomplished by the harmonizing influence of the Supreme Court), upon a question so important is here presented as a ground for review on certiorari by this Court.

5. The misdescription of 12 miles of pipe line and telegraph and telephone lines arising from the fact that there are two parallel lines, aggregating 25.49

miles of pipe line and 17 miles of wire not in the district, was presented as a ground for relief by the bill filed, paragraph 15 (R. 21), and also in the briefs and motion for rehearing, paragraph 9, in the court of appeals, but the point was not mentioned in the opinion. This proposition is also presented as a ground for review by certiorari.

6. The assessment of benefits herein of $5,000 per mile against the pipe line on account of alleged benefits will affect the use, value and ownership thereof to the extent that it will be an undue burden upon interstate commerce and the business of transporting crude oil in interstate commerce by said company and will violate the statutes of the United States regulating commerce between the States.

7. Section 1, Act 153, and Section 1 of Act 15, which takes the place of Act 153, endows Miller County Highway and Bridge District with perpetual existence, and it is created not only for the purpose of building roads, but rebuilding them and keeping them in repair.

Act 83, "An act in aid of Miller County Highway and Bridge District" (see appendix to this brief, as it is not copied in the transcript), approved February 15, 1925, provides in Section 1:

> "The Miller County Highway and Bridge District is hereby authorized to pave with concrete, asphalt or other hard surface deemed by them most advantageous, any road of the district heretofore constructed";

and additional benefit assessments are authorized on account thereof.

Section 1 further provides that the "total present assessment of benefits in the aggregate shall never be diminished."

It is then provided in Section 4, Act 83, that "the assessment of the benefits of said Miller County Highway & Bridge District, now on file, and any other assessment of benefits which it may make, shall bear interest at the rate of 6 per cent per annum."

Therefore the $60,000 assessment against 12 miles of pipe line will be increased annually at the rate of 6 per cent per annum, or $3,600 yearly.

Should the rule of assessment sustained by the court of appeals prevail, then it would be authority for an assessment of more than $240,000, in the aggregate, including the 38 miles parallel pipe lines since in the district not assessed. There have been four acts of the Legisalture and each of them adds more power to the commissioners.

Statement of the Case.

The value of the pipe line and the amount of its revenues were not increased by the road district. A pipe line is built without regard to the roads, and it has its own road along the right of way, and the roads in this district do not parallel the pipe line. The roads in the district fall within that class receiving Federal aid, under the Act of Congress approved July 11, 1916, Chapter 241, 39 Stat. at Large, 355, entitled, "An act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," under the Federal Highway Act, approved November 9, 1921, amending said Act of Congress above mentioned. One of the roads, No. 67, connects with Highway No. 74 at Little Rock, which extends east to Cape Lookout, N. C., and it is one of the "First Priority Roads," as approved by John J. Pershing, General of the United States Armies, August 23, 1922, and the improved roads in the district constitute a part of the general highway system, which are used in interstate traffic and commerce.

The only evidence of benefit to the pipe line by the roads was such use of them as was necessary for employees to go to their work to patrol the lines, or for hauling pipe and material for reconstruction and repair. As the value of the pipe line and its revenues were not increased by the roads, the tax cannot be justified by mere evidence of use, and the pipe line

company, being engaged in interstate commerce, could not be prevented from using the roads.

Snetzer *vs.* Gregg, 129 Ark., 546.
Buck *vs.* Kuykendall, 267 U. S., 307-317.
Michigan Public Utilities Commission *vs.* Duke, 266 U. S., 570-578.
Bush *vs.* Maloy, 267 U. S., 317-326.

The life of a pipe line is 20 years, and depreciation 5 per cent per annum. The assessment was against 12 miles of the pipe of the 25.49 miles of pipe, consisting of two parallel lines, one laid in 1909 and the other in 1915. The cost of the 1915 line was $8,000, or $9,000 per mile, and the other less. Apply the 5 per cent depreciation to 12 years for the 1909 line and five years for the 1915 line, when the 1920 assessment was made, and it will be seen that the depreciation would reduce the lines to not exceeding $5,000 per mile. In other words, the assessment against the pipe line is equal to its value.

The Method of the Assessment in the District

First. The testimony of George T. Conway, the only witness who testified on this point, is that the acreage, which comprised over 136,000 acres, was laid off into zones; Zone 1 included lands within one mile of the road, assessed at $30 per acre; Zone 2 included land in two miles of the road, assessed at $25 per acre, and Zone 3 included land within three miles of the road, assessed at $20 per acre (R., 58). The assessors did not take into consideration the value of the land itself or

the dwellings and improvements thereon, but just simply the location (R., 58). There were plenty of houses throughout the district, and a great part of the land in cultivation.

Second. As to the lands in the city of Texarkana, the assessors ascertained the assessments for general taxing purposes and fixed the benefit at an amount equal to that assessment (R., 62).

The pipe line was assessed on the benefit plan without any rule or guide (R., 72, 59-60).

Actual Value of Cleared Lands Worth $100 per Acre and Wood Lands $40 per Acre

L. C. Adams, witness for the district, and the only witness who testified on the point of value of lands in the district, said that the cleared Red River Bottom lands in cultivation were worth $100 per acre, and that the wood lands were worth $40 per acre (R., 193). These values were increased from $18 per acre (R., 193) by reason of improvement districts, levees, ditches and roads (R., 194).

Of 136,000 acres comprising the district, 96,000 acres were rich bottom lands in Homan Drainage District and Miller Levee District No. 2.

Lands in the District Assessed for Purposes of General Taxation at 10 Cents on the Dollar.

W. J. Paup, witness for the district, and the only witness who testified on the point of assessments for general taxation on the *ad valorem* basis (which is not the benefit assessment involved), testified that the

cleared land in the district in 1920 was assessed at $10 per acre, and that the wild lands were assessed at $4.50 per acre; that the average assessment of hill lands was $5 and $6 per acre (R., 180-182).

He further testified that the lands lying in Miller Levee District No. 2 (about which L. C. Adams testified) had been assessed at $10 per acre for cleared lands, and $4.50 per acre for wild lands (R., 182).

The Method of Assessment for Miller County Highway and Bridge District Fixed by Legislative Acts.

The method required by Section 6 of Special Act 153 says:

The assessors "shall ascertain the value of the real property (which included the pipe line and other utilities) within said district, without said improvement, *and the value thereof as benefited by said improvement, and shall charge against each parcel of real estate* (*and other utilities*) an assessment according to the benefit that will accrue to it by reason of construction of said highways and bridge." The italicized words are left out of the copy of act, in Section 8, at page 173, but the exact language of the acts will be shown in the appendix.

The last paragraph of Section 8 of Act 153 (R., 201) provides that:

> "All railroads, pipe lines (and other utilities) in any way connected with the realty in said district and the appurtenances in said district shall be assessed *according to the betterments and increase in value* in like manner as herein prescribed for real estate, *except that assessment shall be made per mile.*"

Section 6 of Act 15, approved January 29, 1917, under which the new assessment of July 24, 1920, was made, provides:

> "Future assessments shall show the lands of the district as they appear on the county tax books, with such corrections as may be necessary, and shall also show the railroad, street railway, pipe lines (and other utilities) *by the mile*" (R., 215).

Then we quote from Section 6 of Act 15 (R., 215), "opposite each piece of property shall be placed the name of the owner, if known to the assessor, and the amount of the *betterments.*" Thus, it is apparent that the assessors did not follow the acts, but as between the lands in the city and the lands in the country, the pipe line was singled out to bear a benefit assessment as of its value; while the lands in the city, if the assessment for general taxation prevailed there as in the country, were assessed at one-tenth of their value, as the *ad valorem* for general taxation was adopted as a basis; and the agricultural lands bore for the special road assessment from one-fifth to one-third of their value.

The Entire Costs of Hauling from Station and Stringing Along the Pipe Line Would Not Have Exceeded $375 to $400 per Mile.

The uncontradicted evidence in this case shows that the first pipe line was laid in 1909 diagonally across the territory which, subsequently, in 1915, formed the Miller County Highway and Bridge District, and another parallel line was laid across the same territory

in 1915. These were put down by the Prairie Pipe Line Company, and December 1, 1922, these lines were purchased by the petitioner herein, the Standard Pipe Line Company, Incorporated, of Louisiana (R., 97).

The testimony of Mr. R. A. McGrew, who is engineer and vice-president of said company, is not contradicted that the cost of the reconstruction of the line (when prices were high) in 1920 would be $11,500 (R., 102), and in 1915, when the second pipe line was laid, $8,000 or $9,000, and in 1909, when the first pipe line was laid, considerably less (R., 102).

It is further uncontradicted that these were the only pipe lines owned by the petitioner in said district when the assessments of 1916 and 1920 were made under said Acts 153 and 15.

The uncontradicted testimony of Mr. W. B. Fulton, the engineer of the petitioner, is that these two lines of pipe aggregated 25.49 miles, when each assessment, 1916 and 1920, was made (R., 81).

The testimony of Mr. Conway, the principal assessor, intimated that he did not know that there was but one pipe line in the district, and that it was assessed as being twelve miles in length (R., 59).

The only effort on the part of the Highway District to show benefits to the pipe lines was the use of the road in hauling pipe and materials to the right-of-way of the pipe line company or to the nearest points to the pipe lines, but this hauling was not for the benefit of the two pipe lines in existence when these assessments were made. The assessors did not undertake to make the assessment on the ground that other pipe lines would be laid.

It is shown that in 1923 (see Fulton's testimony, R., 85) two other pipe lines were laid parallel with the first two, and according to the testimony of Mr. McGrew, the costs of the entire hauling from the railroad to the pipe line and the distribution thereof along the pipe line would not be more than 4 per cent of the cost of the pipe line. None of these roads of this district was used when the pipe was laid in 1909 and 1915, and the use of the roads occurred in 1923, three years after the last assessment was made when the two additional pipe lines were laid; and if the entire cost of hauling and laying the pipe line should be treated as benefits received from the road, it could not exceed more than the estimate of Mr. McGrew, $375 or $400 per mile (R., 104). The uncontradicted evidence is that the value of the pipe line was not increased by the road (R., 82, 99).

This was so found by trial court, and it is submitted that the evidence does not sustain the court of appeals in reversing the judgment.

Map of District. (R. 238-239).

Miller County Highway and Bridge District is agricultural, containing 136,322 acres, within which is located what is known as Miller Levee District No. 2, consisting of about 90,000 acres of rich bottom lands, and Homan Drainage District, consisting of about 6,000 acres of rich bottom lands. The southwestern part of the district consists of agricultural hill lands. The district is bounded on the west by a line beginning three miles south of Texarkana, running north to State line between Arkansas and Texas and parallel to the

Kansas City Southern Railway to Index, a distance of thirteen miles; thence northeasterly with the meanderings of Red River to Fulton, a distance of fifteen miles; thence southeasterly with the meanderings of the river, fourteen miles; thence west to the place of beginning. This territory embraces nearly the north one-half of Miller County. The city of Texarkana is located on the State line, consisting of a population of 8,259 in Arkansas and 11,840 in Texas (Census, 1920).

The Property of the Standard Pipe Line Company, Inc., in Miller County Highway & Bridge District.

At the time the first assessment was filed, April 29, 1916 (R., 48), and also when the second assessment was filed, July 24, 1920 (R., 55), the Prairie Pipe Line Company owned two separate tracts of land, assessed separately, 40 acres and 31.5 acres, located at Mandeville, a station (unincorporated) on the St. Louis, Iron Mountain & Southern Railway, upon which is located the pumps, plant and tanks of said company. The assessment against the land and improvements thereon is not in controversy in this case.

The said Prairie Pipe Line Company, at the time said assessments were made, owned two district pipe lines in the district, buried in the ground about twenty inches, entering the district at a point near Index (station on the Kansas City Southern Railway and also on the river), and running in a southeasterly direction through the district to a point where it leaves the district six miles east of Texarkana. These lines are practically parallel, and aggregate 25.41 miles in

length. As to telephone poles, there were none, and as to wire, there was a single wire running from Mandeville to Texarkana, thence to Index, a distance of 17 miles, worth $15 per mile. Said pipe lines are crossed by the gravel roads in four different places in the district, almost at right angles.

Accessible to Railroads for Shipment of Pipe and Materials.

The railroads in the district are the Kansas City Southern Railway, running along State line between Arkansas and Texas, from Texarkana parallel with a gravel road to Index, a distance of ten miles, and there is a railroad station (Whatley) at a point midway between Texarkana and Index, and also another at a point north of Index, two or three miles (Ogden).

The St. Louis, Iron Mountain & Southern Railway, running through the district, from Texarkana to Fulton, parallels one of the gravel roads. The St. Louis Southwestern Railway runs from Texarkana through a part of said district, in a southeasterly direction, a distance of four miles; thence it runs in a southerly direction to Garland City. It can be seen, therefore, that at no point accessible to a road is a pipe line within a greater distance of some loading or unloading point of the railroad than two or three miles. There are unloading railroad stations (Genoa) on the St. Louis Southwestern; Mandeville, Texarkana and Paup Spur on the St. Louis Iron Mountain; and Texarkana, Whatley, Index and Ogden on the Kansas City Southern.

The Cost of Hauling Only 4 Per Cent of the Entire Construction.

There is a wagon road constructed and maintained by the pipe line company along and over its pipe line right of way. Hence, the only hauling that could be done upon the public road was from the point where the pipe could be unloaded at one of these stations to a place where it could be deposited and later loaded on wagons and hauled upon the right of way of the pipe line. The cost of the entire hauling from the railroad to the place where it was to be deposited in the trench in case of reconstruction of the pipe line, or the construction of a new line, is only four per cent (4%) of the entire cost of the construction of the pipe line, $375 to $400 per mile, while the entire reproduction cost would amount to about $11,000 per mile (R., 102, 104).

Benefits to Pipe Line Problematical and Speculative.

The pipe line is peculiarly advantaged by its location with reference to the railroads and unloading stations, and its own road built along the pipe line for the purpose of access and distribution. The pipe lines assessed were laid in the ground 1909 and 1915 and there have been no major repairs (Fulton, R., 82; McGrew, R., 102). The pipe line is constructed of joints of rolled steel of the average length of 21 feet, and are connected up with what pipe line men term collars, and they are screwed into these collars. These collars occasionally will leak. A line walker has his calking tools along and calks these joints. The ex-

pense of upkeep has not been less than it was before the roads were built (R., 83). The pipe line keeps only one auto in the district (R., 100). There was a piece of one of these lines near the river removed for the purpose of paralleling it with the other line, and new pipe was substituted in place of that part of the line removed (R., 103). Previous to building the gravel roads, there were roads (R., 167, 168, 169). The engineer of the district testified that no special consideration of advantage or benefit was given to the pipe line in building these new roads (R., 170).

In 1923 the pipe line company constructed two other pipe lines, parallel with the two purchased from the Prairie Pipe Line Company. These were laid in 1923, three years after the last assessment was made (R., 86). Some of the pipe was hauled from the railroad stations, principally Paup Spur, including railroad stations, along the improved roads (which had taken the place of the dirt roads) and a full load carried on the improved road upon the pipe line road along the pipe line; and where a full load was taken from the station, it would have to be unloaded in order to unload it before getting to the pipe line road, and often in hauling from the station over the road the wagons only took such number of pipes as could be hauled along the pipe line road, thus avoiding the necessity of throwing off part of the load (R., 177). It was shown that the roads did not parallel the pipe lines, and no full load could be hauled along the improved road to the pipe line, except at the crossings. There was an unloading place between Paup Spur and Index where

some of the truck loads were discharged, and then it was necessary to reload the pipe on wagons and haul the same to the pipe line and along the pipe line. The cost of handling the pipe line in loading and reloading minimized, if it did not entirely take away, the advantage of the limited use of the public road in hauling the pipe.

But no part of this hauling in 1923 applied to those two pipe lines owned by this company in 1920 against which the assessment alone can apply, if at all.

In the opinion of the circuit court of appeals it is said: "Other witnesses testified that on the occasion of a fire at appellee's pumping station, the fire department, at its request, arrived in time to be of material assistance; that without good roads they would not have attempted to run the risk of danger to equipment and danger to the lives of the firemen that would have resulted." The only evidence in regard to this is that of W. J. Springer, chief of the fire department (R., 113-117), who testified that one day last week (April 21, 1925) the fire department made a run to Mandeville, a distance of six miles, for the purpose of putting out a conflagration at the pumping plant of the Standard Pipe Line Company, Inc.

> "Q. As a result of that, was the fire extinguished so that no heavy damage occurred?
>
> "A. No, sir; the fire was not extinguished (R., 114). It burned out, so I understand, about 11:30. We put a pump to work until the gate house boiled over, or rather the oil came back, boiled over and ran down the pit inside of the pump house, then we quit pumping water, and

> the only thing that was done then, we replaced a door in the side of the main engine room, a fire door which had burned and flooded that room. There was some ditching done and dikes thrown up. That was done by the company's men" (R., 114).

This apparently is the only occasion in the history of the fire department where it attempted to put out a fire for the Standard Pipe Line Company, Inc.

But it is submitted that this benefit, if it was done, cannot be charged to the pipe line itself, the assessment of which alone is involved in this case. The assessed benefits against the lands, which include pumping plant and the tanks where the fire was, are not questioned. The assessments against the lands have been regularly paid and are not involved in any way in this case.

In the opinion of the United States Circuit Court of Appeals (R., 245), "it (the pipe line company) does no business within the district other than maintain and operate its pipe line as part of an interstate system." At page (R., 246) the court says: "It obtains all its oil in Texas or Oklahoma, and conveys it through Arkansas to a terminus in Louisiana, nor does it have any revenue from any source within the State." There is no evidence that any of the oil is obtained in Texas.

In the third paragraph (R., 246) the court said:

> "These and other witnesses called by *appellee* testified, however, that when they put in two additional lines they used the new roads for hauling pipe and unloading it adjacent to the

> right of way; *that the new roads resulted in great economies in time and cost,* both in laying and repairing the line and in affording access to the same."

No witness for appellee testified to this statement.

The court said in the second paragraph (R., 251):

> "The assessment here is what is denominated as a general improvement tax, laid against the real property owned by appellee within the district on an *ad valorem* basis."

This statement is not sustained by any evidence.

LEGEND

Miller County Highway & Bridge District

Area Involved - Colored -

Railroads "

Highways "

S.P.L.Co's Lines "

LITTLE RIVER COUNTY

FULTON

T 13 S

R27W

R26W

R28W

RED RIVER

HEMPSTEAD COUNTY

T 14 S

HOMAN

CLEAR LAKE JCT.

MANDEVILLE

MANDEVILLE JCT.

R25W

LA FAYETTE COUNTY

T 15 S

MT. PLEASANT

GENOA

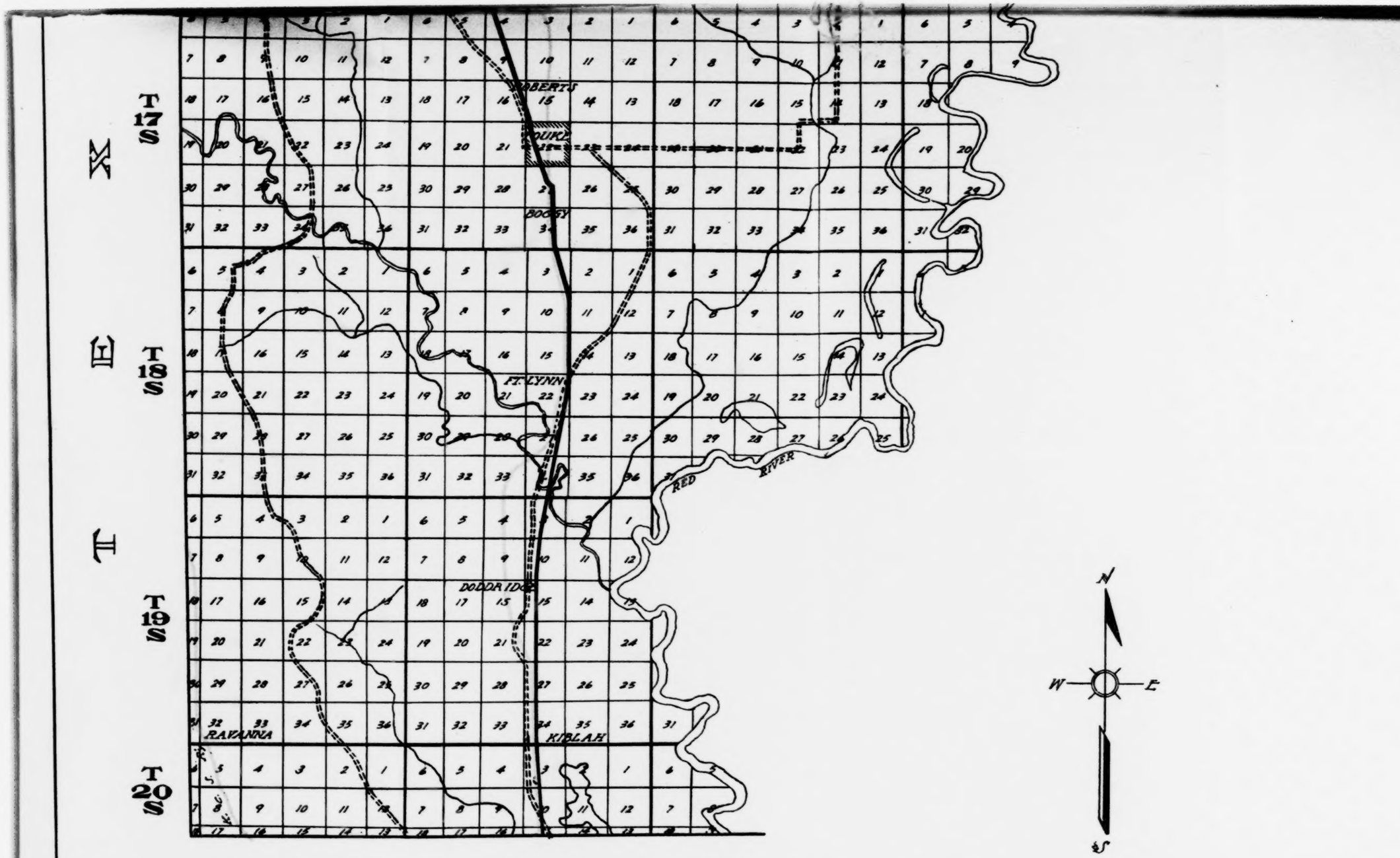
ARTEX

MAXTON

GARLAND CITY

T 16 S

BOYD



LOUISIANA

MILLER COUNTY
ARKANSAS

Standard Pipe Line Company Inc.
Shreveport, La. Feb. 4, 1924.
Drawing No G-132

Specifications of Error.

Substantially the same assignments of error herein were presented in motion for rehearing and by brief to the court of appeals (no assignments of error having been made originally by appellee in the court of appeals, since your petitioner was appellee in that court; see petition for rehearing.

1. The circuit court of appeals erred in its failure to sustain each of the findings of law and fact, as made by the district court, as copied in the petition for writ of certiorari (R., 33).

2. The circuit court of appeals erred in its failure to hold, as did the lower court, that the levy of $5,000 per mile upon plaintiff's pipe line and telegraph and telephone wires was palpably arbitrary; added nothing to the value of petitioner's property; added nothing to petitioner's revenue; alleged benefits were speculative and conjectural; that said levy was not upon the plan followed with regard to other lands in the district; that the attempted confirmation and ratification of the assessment of benefits by Legislative Acts 15 and 83 was invalid for nondescription of the property involved; that said description rendered the assessment invalid; that the said assessment was so arbitrary and discriminatory that it denied to the petitioner the due process and equal protection of the provisions of the Constitution of the United States, and that said assessment was void, as being an undue burden upon petitioner's business, which is that of transporting oil in interstate commerce.

3. It is submitted that the result of this case in the court of appeals was probably controlled by misunderstanding of the facts, as shown by the following statement in the opinion of the court (R., 251), which is here assigned as error:

> "The assessment here is what is denominated as a general improvement tax, against the real property owned by appellee within the district, on an *ad valorem* basis."

This was argued in the brief for rehearing in the court of appeals.

4. The court of appeals erred in failing to hold that the alleged assessment of benefits did not describe any property belonging to petitioner so that it could be identified and found, and such assessment was therefore void and inoperative. This assignment is directed to the evidence that there were two parallel pipe lines in the district belonging to the petitioner, aggregating 25.49 miles, and that the right of way was not assessed, and that both pipe lines could not have been assessed under the description of 12 miles of pipe line, nor could 17 miles of wire be included within 12 miles.

5. The court of appeals erred in not holding that the assessment of benefits against the pipe, telegraph and telephone line without any basis or rule at $5,000 per mile was a constructive fraud upon the rights of the petitioner, and that the assessment should be set aside and cancelled.

6. The court erred in not finding that the plaintiff is not chargeable with $5,000 per mile of its pipe line,

upon the ground merely that it had to transport its pipe over part of the public road at a time when new pipe lines were being laid in 1923, and in not holding that the sustaining of the assessment by reason of the fact that said roads were so used would be a tax upon plaintiff's business, and not an assessment that could be justified by the facts for a local road improvement.

7. The court erred in not holding that the alleged assessment of benefits was a burden upon the interstate commerce in which the plaintiff was solely engaged from the time said pipe lines were constructed and laid.

8. The circuit court of appeals erred in failing to hold that plaintiff (the petitioner herein) was not estopped to have relief by virtue of its bill in equity, on account of the failure of the Prairie Pipe Line Company to avail itself of the administrative remedy provided by Section 7 of Act 153, creating said district, for the purpose of submitting and having corrected any complaint or objection it had to the said assessment of benefits.

9. The court of appeals erred in failing to hold that your petitioner is not estopped to prosecute the bill in equity filed in this cause, because the Prairie Pipe Line Company paid three years' taxes under the original assessment, and failed to appear before the assessors or commissioners for the purpose of having the assessment corrected in the time and in the manner prescribed by Section 6 of Act 15.

10. The court of appeals erred in holding that the petitioner has been estopped by any action of the Prairie Pipe Line Company or any other account from prosecuting said bill in equity.

11. The circuit court of appeals erred in considering the evidence that the Standard Pipe Line Company, Inc., hauled joints of pipe, materials and men over the improved roads in the construction of new pipes in 1923, as evidence of benefits to sustain either of the assessments of 1916 or 1920 against two pipe lines, one of which was laid in 1909 and the other 1915.

12. The court of appeals erred in considering any evidence of the use of the public roads by the Standard Pipe Line Company, Inc., in carrying on its business of maintaining and operating the said pipe lines which it owns and against which assessments have been laid.

13. The court of appeals erred in considering as evidence of benefit against said pipe lines the circumstance of the Fire Department making a run to Mandeville over the public road with the city fire equipment for the purpose of aiding the subjugation of a fire located on a tract on which the assessments are regularly paid and which are not involved in this case.

14. The court of appeals erred in making the following statement and applying the same as material in the consideration of this case (R., 245): "Full right of appeal from the action of the assessors was given to the commission and thence to the county court."

This and assignment No. 8 is directed to the fact that in 1920 a new assessment was made to take the

place of the one herein; Section 7 of Act 153 allowed an appeal to the county court from the action of the commissioners, and to the further fact that the Arkansas Supreme Court holds that such an appeal would be ineffectual, as the county court was without jurisdiction to entertain the same.

15. The court of appeals erred in that part of its opinion, in the following statement (R., 245): "Under a third act relating to this district, being No. 83 of the year 1925, the Legislature declared that the assessment of benefits made by the district to be just, equitable and proportionate *and ratified the same.*" This assignment is directed to the proposition that the Legislature could not cure the assessment by reason of the fact that the particular 12 miles of pipe line intended was not identified by the assessment.

16. The court of appeals erred in its declaration of law in the opinion, as follows: "They (the authorities which had previously been quoted) forbid us to weigh the *benefits* against the burdens, and require us to hold in the instant case that under all circumstances there was sufficient justification for the legislative determination that appellee's property was benefited" (R., 250).

17. The circuit court of appeals erred in not sustaining the decision of the lower court, in view of the finding of the court of appeals, as follows (R., 248): "It may be observed that the procedure by which the value of the particular property of appellee was arrived at and the *amount of the benefits* determined does not commend itself to us as altogether fair, nor

is the tax imposed against appellee *entirely equitable* as between it and *other property owners* of the district."

18. The court of appeals erred in considering as material in this case that part of the opinion (R., 247), as follows: "Their predecessor in title, the Prairie Pipe Line Company, paid three or four installments of these taxes without protest." There is estoppel even without considering the general reassessment. See opinion by Kenyon, Circuit Judge, Kansas City Southern Ry. Co. *vs.* Ogden Levee District; also opinion by Booth, Board of Directors of Miller Levee District No. 2 *vs.* Prairie Pipe Line Company, 292 Fed., 474; also upon the questions of estoppel herein asserted.

19. The court of appeals erred in holding that the pipe line of the Standard Pipe Line Company, Inc., is real property and property included in the district for the same reason that right-of-way of railroad companies are included. The said pipe lines are assessed as personal property in Arkansas, under Sections 9976 *et seq.* of Crawford & Moses Digest, Statutes of Arkansas, 1921, and attention is directed particularly to Subdivision 4 of Section 9979 of Crawford & Moses Digest, which is as follow:

> (4) "In case of any pipe line company the commission shall take the same proportion of the aggregate value of the entire property within and without this State as determined by this act of such corporation as the number of miles employed in the State bears to the total

number of miles employed by such company; the assessment herein provided for shall include the office fixtures, teams, wagons, and other apparatus of said companies."

20. Benefits against lands were assessed with reference to their location only (R., 58), and the houses and improvements on lands and the value of lands were disregarded by the assessors (R., 58). The pipe line is located on leased lands, nine one-hundredths (9/100) of an acre per mile. It was a discrimination to assess the pipe line and omit the benefits to houses, improvements on the lands of the district.

ARGUMENT.

The Powers of the Commissioners. Collection of the Benefits. Bond Issues.

It has heretofore been argued by the respondent that the assessment of $60,000 does not mean what it says and should not be considered a lien to its full extent, and there was testimony of one witness in this case tending to show that the petitioner should not be required to pay more than twelve to twenty thousand dollars upon the $60,000 assessed benefits (R. 237), according to the then existing program, though not having the sanction of the legislative acts, but the same witness, the Secretary of the Board, testified that the Commissioners were then preparing to issue $35,000 additional bonds (R. 237).

The following bonds had been issued:

December 5, 1916, $223,000 (R. 47); March 24, 1917, $177,000 (R. 48); August 5, 1919, $40,000 (R. 48); September 24, 1920, $60,000 (R., 48); March 15, 1922, $40,000 (R., 48).

This testimony was given April 21-22, 1925 (R., 34), and as the district has perpetual existence for the purposes of said Acts 153 and 15, see section 1 (R., 95) and section 1 (R., 212) of each act, and each act permits an annual reassessment (R., 201 and R., 217), it is certainly not reassuring to any property owner that the full amount of the benefits will not be collected during the future years. The policy of the legislature which should control the management of the district is illus-

trated by the fact that we have already had four legislative acts affecting this district, in each of which additional powers are given to the commissioners. In the last act, which is Act No. 83, approved February 14, 1925, entitled, "An act in aid of Miller County Highway and Brdige District," appendix of this brief (R., 102), it is provided in Section 4 that the assessment of benefits shall bear interest at the rate of 6 per cent per annum. The assessment of benefits of $60,000 therefore against the pipe line company will be increased annually at the rate of $3,600 (R., 105).

The propheey of the secretary of the board, in giving these tabulations of bonded indebtedness that would be paid out in 20 years, can only be taken as evidence of his expectations if the board should not decide to issue other bonds and exercise the powers of the controlling legislative acts, to which we call attention.

By Act 153 (R., 195-211), approved March 5, 1915, it is stated in Section 8 (R., 201): "As soon as all of the assessments have been equalized and adjusted as aforesaid, the commission shall by resolution charge each lot, tract or parcel of real estate, * * * pipe line and all other franchises * * * with an assessment equal to the benefit estimated in the said assessment list to accrue to such land, lot * * * pipe line * * * and all other franchises of whatsoever nature in any way connected with the realty in said district, and the commission shall apportion such assessment into annual installments so as to realize annually only such a sum of money as will be necessary to meet the ex-

penses incurred in each year from interest and a sinking fund to pay the bonded indebtedness, *and for such improvements and maintenance as the commission shall determine shall be paid from the assessment annually;* provided, that the improvements herein undertaken shall not exceed 15 per cent of the valuation of real property in said district, subject to improvement district assessment, as ascertained by the State and county assessments of said property for the year next preceding the time when the assessment herein provided for may be made. Provided, however, *that this limitation of* 15 *per cent of valuation shall not prevent an annual assessment,* as hereafter provided, *for the maintenance* of the improvement after the cost of the construction has been paid" (R., 201).

Then follows in said Section 8, at the top (R., 202), the following provision: "The commission shall annually appoint a board of assessors, which shall each year perform the duties hereinbefore provided, which board of assessors shall continue as far as possible the assessment first made, but shall take into consideration *the improvements and enhanced value* so as to equalize the burdens of taxation for the district."

Then follows Section 9:

> "Said assessments declared in said resolution shall be a charge and a lien against all real estate in the said district from the date of said resolution" (R., 202).

Then follows Section 10:

> "The board shall annually, before the first of September determine the amount of taxes which

will be required for the succeeding year, and enter upon its records an order levying the same upon the benefits to the property of the district, subject to taxation thereunder" (R., 202).

While it seems that Act 15, from which we will quote, covers the whole subject and takes the place of Act 153, from which we have just been quoting, yet the foregoing provisions will be helpful in determining whether or not it was intended that any part of the assessed benefits should ever be remitted.

Act No. 15.

Act 153 (March 5, 1915; R., 195) provides for 60 miles of highway and a bridge across Red River (R., 196).

This Act No. 15, approved January 29, 1917 (R., 212-223), is amendatory of Act 153, and doubtless should be held to take its place, and has for its purpose the building of 75 miles of free public highway (R., 213) and it leaves out the bridge, the building of which is provided for in a separate Legislative Act No. 16 (R., 223).

It is provided in Section 6 (R., 214); "The assessment heretofore made by the assessors for said district is hereby ratified and confirmed as the assessments of the benefits which will accrue from the making of the improvements herein contemplated." The former assessments were for benefits arising from the building of 60 miles of highway and a bridge, filed April 29, 1916 (R., 48), and the assessments of benefits against the pipe line in that assessment was $59,340 (R., 46).

The confirmation of this former assessment was, however, nullified by the same section of the said act (Section 6, Act 15, R., 214), and the subsequent proceedings of the assessors thereunder which reads as follows: "If the board changes its plans of improvement, it shall file such changed plans with the county clerk of Miller County, and if either the board or any individual thinks that, by reason of said changes in the plans, the assessment heretofore made has become inequitable, a new assessment of benefits shall be ordered by the board, and the board may, not oftener than once a year, order a reassessment of the benefits in the entire district; but in no event shall the total amount of the assessed benefits within the district ever be diminished; and if any future assessment should be for an amount less than the preceding assessment of benefits, such assessment shall be void, and the preceding assessment shall continue in force" (R, 215).

A new assessment of all the property in the district was ordered by the board of commissioners and filed July 24, 1920 (R., 55), and took the place of the first assessment, as stated by Louis Josephs, secretary.

> "Q. Did that (second general assessment of benefits) take the place of this one (the first assessment)?
>
> "A. Well, yes; it follows that if a reassessment was made the first one was out of order.
>
> "Q. I will ask you to look at the record here of the assessment of benefits (the second assessment filed July 24, 1920), as to what it shows as to Prairie Pipe Line.
>
> "A. It says $60,000.

"Q. I want you to read it just as it appears, Mr. Josephs.

"A. Prairie Pipe Line Company, 12 miles pipe line and then Prairie Pipe Line Company deeded (ditto) 12 miles, T. L. telegraph and telephone line, $5,000 per mile, total $60,000" (R., 50).

As to the reassessment, see also the testimony of Geo. T. Conway, the only assessor who testified.

"Q. Were you ordered to make a resassessment in the road district?

"A. I think after 4 or 5 years there was a reassessment made (this was the one that was filed July 24, 1920, which was authorized by Section 6 of Act No. 15 (R., 214), approved January 29, 1917).

"Q. By whom were you ordered to make that reassessment?

"A. By the board of commissioners.

"Q. I will hand you that assessment of benefits and will ask you how the lands in the act were assessed in your reassessment.

"A. Why it seems to me like the assessment of the lands outside the city was arrived at in the same manner; solely with reference to location; based solely on the proximity of the land to the road (R., 62) (without considering the improvements and dwellings on the land (R., 58). The reassessment of the pipe line was 'Prairie Pipe Line Company, 12 miles pipe line and 12 miles telegraph and telephone lines, $5,000 a mile or $60,000" (R., 62).

Mr. Conway further stated that at the time the second assessment was made roads in the district had been

built (R., 68), and that the assessors had before them the second act (Act No. 15) when the second assessment was made. "We took into consideration the changes in the roads from the way they were originally laid out, and the way they were actually built, in making the new assessment." The roads as originally laid out did not conform to the roads as built, and there were some that were in zone 3 that should possibly be in zone 2, and *vice versa*, and these readjustments were made, so that there was an equal benefit according to the zone as they were finally built" (R., 68). In the second assessment benefits against lands in the city of Texarkana, Arkansas, were assessed at an amount equal to the assessed valuation for county and State purposes (R., 68), and lands in the district were assessed on the zone plan, at $30, $25, and $20 (R., 69). The two pieces of land of the Prairie Pipe Line Company were assessed on the zone plan, forty acres, $1,200, 31.5 acres, $960 (R., 69). The pipe line was assessed by the mile (R., 69). It is further provided by Section 6 of Act 15 (R., 215), that: "Future assessment of benefits shall be made in books to be furnished by the board, which shall show the lands of the district as they appear on the county tax books, with such corrections as may be necessary, and shall also show the railroad, street railway, gas and electric light, water, tramroad, telephone, telegraph and pipe lines by the mile, and also all other franchises of whatever description in any way connected with the realty in the district. Opposite each piece of property shall be placed the name of the owner, if known to the assessors, and

the amount of the betterments." Then follows a requirement that the secretary of the board shall give notice in a newspaper published in Texarkana, that the assessment has been filed, and shall set a date not less than 30 days distant at a place where any person interested may appear before the board of assessors and complain of the assessment of his property or of the assessment of any other property in the district (R., 215). And it is further provided, that at the time fixed in said notice: "Any property owner aggrieved by the action of the board of assessors may appeal to the commission within thirty days; and the commission shall meet at some convenient time and hear all appeals and determine the same, and *their decision shall be final*" (R., 215).

It is provided in Section 7 that: "The improvements authorized by this act shall not cost more than 10 per cent of the value of the real property in said district as authorized by the last State and county assessment made before the particular work is undertaken; but interest shall not be computed as a part of such costs (R., 216).

It is further provided: "If, in the future, the assessed value of the property in the district shall be increased, the power of the board to expend money for improvements shall increase proportionately, and the board shall have the authority to levy further taxes *in excess of the 10 per cent limit herein prescribed*, for the purpose of making necessary repairs upon the highways improved by it" (R., 216).

By Section 1 of the Act, the district shall "*have perpetual succession for the purposes hereinafter designated.*"

Act 83, Approved February 14, 1925.

At the time of the trial of this cause (R., 34) Act 83, approved February 14, 1925, though in full force, was not introduced, as had been the previous acts affecting the district, and therefore as it had a bearing upon the decision in the United States Circuit Court of Appeals and affects the powers of the board of commissioners, we have copied the same in full in the appendix of this brief.

By Section 1 of the Act it is stated that the expense of maintaining gravel roads is so great that it would be to the interest of the district to pave said roads with concrete, and by Section 1, the commissioners "are hereby authorized to pave with concrete, asphalt or other hard surface deemed by them most advantageous, any road of the district heretofore constructed which they find will require such hard surface in order to carry economically the traffic thereon," and it is further provided by said section, "The cost of the improvement authorized by this act shall not exceed 15 per cent of the value of the real property as shown by the last county assessment made before the work is undertaken; but interest shall not be computed as part of the cost."

It is further provided "the total present assessment of benefits in the aggregate shall never be diminished and the rate of taxation shall never exceed 10 mills per annum on the assessment of benefits.

It is further provided by Section 4 of said Act 83: "The assessment of the benefits of said Miller County and Bridge District now on file and any other assessment of benefits, which it shall make, shall bear interest at the rate of 6 per cent per annum. Collection shall first be applied to the interest; but interest need not be calculated until necessary to avoid collecting more than the total assessed benefits with interest."

It is therefore apparent that the effort to show that the entire assessed benefits is not a lien upon the property of the pipe line company and will not be collected is without foundation.

The Full Amount of the Benefits is a Collectible Burden Against Assessed Property.

There seems to be no confusion in the authorities as to whether or not an assessed benefit is considered a lien for the full amount against the assessed property.

In Kirst *vs.* Street Improvement Dist. No. 120, 86 Ark., 1-8, it was said: "Special assessments for local improvements find their only justification in the peculiar and special benefits which such improvements bestow upon the particular property assessed. Any exaction in excess of the special benefits is, to the extent of such excess, a taking of property without compensation."

Coffman *v.* St. Francis Drainage District, 83 Ark., 54.

St. Louis S. W. Ry. Co. *v.* Board of Directors, etc., 81 Ark., 562.

Cribbs *v.* Benedict, 64 Ark., 555-61.

It is held in the following cases that an assessment against real estate in an improvement district for preliminary expenses, which has been abandoned is collectible to the extent of the benefits which would have been received.

Neterer *v.* Dickinson and Watkins, 153 Ark., 5.
Thibault *v.* McHaney, 119 Ark., 196.
West Crawford Road Improvement Dist *v.* M. P. R. R. Co., 157 Ark., 304.
Missouri Pacific R. R. Co. *v.* Sears, 166 Ark., 104.
Board of Directors of Crawford County Levee Dist. *v.* Dunbar, 107 Ark., 285.
Burton *v.* Chicago Mill & Lumber Co., 106 Ark., 296.
Standard Pipe Line Co., Inc., *v.* Commissioners of Index Sulphur Drainage Dist. (The case appealed from, see R., 203-211.)

I.

Erroneous Finding of Fact by Circuit Court of Appeals With Reference to the Assessment.

Beginning with the 19th line (R. 225), the court of appeals said: "The assessment here is what is denominated as a general improvement tax laid against the real property owned by appellee in the district on an *ad valorem* basis."

Section 7 of Act 153 (R. 199), and Section 6 of Act 15 (R. 214), requires the assessors to assess the lands and utilities in the district according to benefits; noth-

ing is said about *ad valorem* tax for general taxation. The only witness who testified upon this proposition as to how they reached the assessment was Geo. T. Conway. He testified that the lands of the district were divided into zones, 1, 2 and 3, and the lands were assessed without regard to improvement, clearing or value, at $30, $25, and $20 per acre, according to location. That they did not take into consideration any improvements, although this was an agricultural district, thickly settled. As to the pipe line, occupying 9/100th of an acre per mile, they assessed it at $5,000 per mile; in other words, this small strip of land is assessed for the improvement thereon, which meets the finding of the district court that the pipe line was not assessed as the other property.

The only consideration given to *ad valorem* tax was that as applied to the lots in the City of Texarkana. The assessors found the *ad valorem* assessments for the town property and added an equal amount for benefits, but they had no authority to do that from the acts creating the district and authorizing the assessment.

Assuming that the assessment for general taxation was uniform throughout the district, it will be seen from the testimony of L. C. Adams (R., 192) that property was assessed for general taxation at one-tenth of the value. (See his testimony.) That the rich lands in Miller Levee District No. 2 (which included 90,000 acres of the 136,000 of the whole district) were worth $100 per acre where cleared and in cultivation, and

the woods lands were worth $40 per acre. It was assessed, according to the testimony of Paup (R., 158), at $10 per acre and $4.50 per acre, and the lands and hills were assessed from $4.50 to $6.00 per acre.

It is submitted that the assessment against the pipe line bore the interpretation of the district court in its findings. It was not laid upon the same plan that was followed with regard to other lands in the district, and that it was palpably arbitrary.

The assessors in fact had no rule by which the pipe line was assessed. The court of appeals evidently misunderstood the facts in the case or the above declaration would not have been made.

II.

The Case of Road Improvement District No. 1, of Franklin County, Arkansas, vs. Missouri Pacific R. R. Co., Decided April 18, 1927, 274 U. S., 188-195.

In the above case, $75,686 was assessed against 24 miles of railroad, in behalf of a road district. The suit was brought to annul the assessment of benefits, and "while the suit was pending, the State legislature confirmed the assessments specifically, including that against the railroad, and authorized additional assessments, to be made conformably to the first act, to meet the cost of the proposed changes in the width of the road bed and in other features of the improvement." Both the district court (through Honorable F. A. Youmans, Judge of the Western District of Arkansas, who tried the case at bar) and United States Circuit Court

of Appeals, Eighth Circuit, held that the assessments were plainly arbitrary, unreasonable, discriminatory and in violation of the due process and equal protection clauses of the Fourteenth Amendment. There was much evidence introduced to prove that the railroad was benefited, and the Supreme Court, in modifying the decision below, held that there was evidence to show that the railroad was benefited, but not beyond $15,000. The Court then said:

> "Our conclusion is that the assessment against the railroad is unreasonably discriminatory insofar as it is based on personal property, and in this respect violates the equal protection clause of the Fourteenth Amendment; *and that it is otherwise so excessive as to be a manifestly arbitrary exaction, and in violation of the due process of law clause of the same amendment.*"

In these respects the finding and holding below are well grounded.

The opinion in the case at bar was filed in the court of appeals on the same day, April 18, 1927, that the foregoing decision was rendered by the Supreme Court, speaking through Mr. Justice Van Devanter, and it conflicts with the latter decision and is therefore erroneous, in this, that the court of appeals felt bound to sustain the assessment, if there was any benefit at all, in the use of the following language:

> "The tendency of these very late authorities is to greatly narrow the constitutional grounds of objection to assessments of this character.

> They forbid us to weight the benefits against the burdens and require us to hold in the instant case that under all circumstances there was sufficient jurisdiction for the legislative determination that appellee's property was benefited" (R., 250).

It is submitted that the authorities set out in said opinion, just preceding said quotation, Kansas City Southern R. R. Co. *vs.* Road Improvement District No. 6, 256 U. S., 658; Miller Levee District No. 2 *vs.* Prairie Pipe Line Company, 292 Fed., 474, and Myles Salt Co. *vs.* Iberia Drainage District, 239 U. S., 478; Thornton *vs.* Road Improvement District No. 1, Clark County, Ark., 291 Fed., 527, hold a contrary view to that expressed by the court of appeals.

The decision of the court of appeals also conflicts with the decision of Thomas *vs.* Kansas City Southern Ry. Co., 277 Fed., 708, affirmed by Supreme Court, 261 U. S., 481. The facts in that case show that there was some benefit arising from the improvement but the assessment was so excessive that it could not be sustained, although it had legislative sanction.

The Assessment May be Extended from $60,000 to $240,000.

The legislative acts governing the present road district authorized the assessors to assess benefits annually (R., 201-202, 214-215, 216); but by the third paragraph of Section 1 of Legislative Act 83, approved February 14, 1925, not copied in the record, appearing in appendix to this brief, the total assessment of benefits in the aggregate shall *never be diminished;* and by

Section 4 of said act, the assessment of *benefits shall bear interest at the rate of 6 per cent per annum.*

This suit applies to cancellation of assessment against 12 miles of pipe and wire, which is unidentified of 25.49 miles, which were in existence in 1920, when the present assessment was made. Two independent separate lines have been laid upon the right-of-way since that time, and therefore, if this assessment as to 12 miles should be sustained, it would be authority for extending assessments to include the new lines, which in the aggregate would be in excess of $240,000, besides the 6 per cent interest authorized to be assessed annually.

By Section 1 of said Act 83, above mentioned, the commissioners are authorized to pave with *concrete, asphalt or other hard surface,* deemed by them most advantageous, any road in the district heretofore constructed, which they find will require such hard surface.

The circuit court of appeals was in error in reaching the conclusion that no relief could be awarded in this case, in the following language (beginning with ninth line from the bottom):

> "It may be observed that the procedure by which the value of the particular property of the appellee was arrived at, and the amount of the benefits determined, *does not commend itself to us as altogether fair, nor is the tax imposed against appellee entirely equitable as between it and other property owners in the district;* but this standing alone is not decisive of the question."

This, we submit, is in conflict with the following excerpt from the opinion of Gast Realty Co. *vs.* Schneider Granite Co., 240 U. S., 55; 60 L. Ed., 526, as follows:

> "If the law is of such a character that there is no reasonable presumption that substantial justice will be done, but the probability is that the parties will be taxed disproportionately to each other and to the benefit conferred, the law cannot stand against the complaint of one so taxed in fact."
>
> Martin *vs.* District of Columbia, 205 U. S., 135.

And in the case of Thomas *vs.* Kansas City Southern Ry. Co., 277 Fed., 708 (affirmed by the Supreme Court in 261 U. S., 481), the court said:

> "In view of what has been said above, it is clear that appellees are benefited; but this does not preclude them from claiming that the amount or relative proportion of the assessment made is void."

III.

The Case of Thomas vs. Kansas City Southern Railway Co., 261 U. S., 481.

In this case the legislature of Arkansas created, by special law, the Little River Drainage and Levee District of Sevier County, Arkansas, No. 1, and the act creating the district authorized an annual assessment of 6 per cent of the assessed value (for general taxation) of the property within the district. The Court, speaking through Mr. Justice Brandeis, in holding that the assessment which resulted in charging 57 per cent

of the burden upon the railroad and 43 per cent upon the 12,000 acres of land, one-tenth of which was in cultivation, was palpably arbitrary and discriminatory, said:

> "The railroad will derive some measure of indirect benefit, because the drained land would doubtless be cultivated, and more extensive cultivation would probably increase traffic over the line."

And the injunction which had been issued against the assessment by Hon. F. A. Youmans, Judge of the District Court for the Western District of Arkansas, who tried the case at bar (sustained by the United States Circuit Court of Appeals, Eighth Circuit, 277 Fed., 708), was affirmed.

IV.

The Case of Kansas City Southern Railway Co. vs. Road Improvement District No. 6, Little River County, Ark., 256 U. S., 658-661; 65 L. ed., 1151.

In the above case it appears that in levying assessment of benefits upon the railroad track, that the assessors disregarded both area and position, and undertook to estimate benefits without disclosing any basis therefor. As to farm lands and town lots, the assessments were made wholly without regard to their value, improvements thereon, or their present or prospective use. The farm lands were divided into zones and were assessed accordingly by the acre, and the town lots were assessed without reference to value or improve-

ments, according to location. The court held that the railroad company had not been treated like individual owners, and that the discrimination against the railroad was so palpable and arbitrary that it amounted to a denial of the equal protection of the law. Benefits were extended against 9.7 miles of railroad track, $67,900.

In the case at bar, Legislative Act 153, creating the district, in Section 7 (R., 199), and Section 8 (R., 201), and Act 15, which was a re-enactment of the whole subject; and Section 6 (R., 214), required all lands in the district to be assessed according to benefits, including pipe lines and other utilities, by the mile. The assessors divided and assessed the lands according to zones: Zone 1, within 1 mile of the road, $30 per acre; zone 2, within 2 miles of the road, $25 per acre, and zone 3, within 3 miles of the road, $20 per acre (R., 58), but wholly disregarded the value of land by the acre and the improvements thereon, and as to city property the *ad valorem assessment* for general taxation was taken and an equal amount assessed for benefits against such property. It is shown that the assessments for general taxation in Miller County are one-tenth of the value of the property (Adams on cross-examination, R., 193; Paup, 181-182). As to the pipe line and wire, benefits were assessed at $5,000 per mile, or $60,000, without any apparent reason or basis. (See second assessment, R., 61.) Telegraph and telephone lines were assessed $200 and $250 per mile, respectively (R., 13).

Practically the same plan was pursued by the assessors in the case at bar as in Kansas City Southern

R. R. Co. *vs.* Road Improvement District No. 6, *supra*, which the United States Supreme Court, speaking through Mr. Justice McReynolds, condemned and set aside as palpably arbitrary and discriminatory.

In view of this decision the district court made findings as follows:

Findings of the District Court.

In the case at bar the United States District Court for the Western District of Arkansas, on the same facts held: (1 and 2) That the construction of the highway has not added anything, and will not add anything, to the value or revenue of the pipe line; (3) that the levy of a tax of $5,000 a mile upon plaintiff's pipe line is not laid upon the same plan that is followed with regard to the other lands in the district; (4) that the levy of $5,000 a mile is palpably arbitrary; (5) that the alleged benefits to plaintiff's property by construction of the highway is speculative and conjectural; (6) plaintiff is not estopped from maintaining this suit; the act of the legislature purporting to validate generally the levy of the tax made by the defendant upon the property in the district is not effective to validate the levy upon plaintiff's pipe line, because as to plaintiff's property such levy is arbitrary (R., 33).

We respectfully submit that the reversal of each of these findings was error and based on a clear misapprehension of the facts.

Act No. 83, approved February 14, 1925, in Aid of Miller County Highway and Bridge District.

Attempted Confirmation of Assessment.

The United States Circuit Court of Appeals, in the case at bar, referred to the above act in the following language: "Under a third act, relating to this district, being No. 83 of the year 1925, the legislature declared that the assessments for benefits made by the district to be just, equitable and proportionate, and ratified the same (R., 245).

The contention of the petitioner, appellee in the lower court, was that the assessment of 12 miles of pipe line against the Prairie Pipe Line Company (from which the Standard Pipe Line Company, Inc., petitioner herein, purchased December 1, 1922) was void for misdescription. The uncontradicted evidence shows one pipe line was laid in this territory 1909, another distinct line paralleling it, 1915, and that the aggregate length of these two lines in the district was 25.49 miles (R., 8).

This description, we submit, was not sufficient to put the owner of these lines upon notice or to require them to appear before the board for the purpose of correcting the assessment. It would appear that this subject is somewhat similar to misdescription for lands for general taxation, and while the lien may exist, yet without correction or some kind of proceeding, the taxpayer would not be subjected to the penalties or loss of his property for failure to pay the tax. A purchaser at a foreclosure sale under this description would be at sea in asserting his claim to any part of

either pipe line, unless in that suit the court should reform the description so that a particular part of the property involved could be subjected to the lien. It has not been claimed, and cannot be, that the omission to appear before the board of assessors was wilful or contumacious, but for the simple reason, as elsewhere shown, that the officers of the company had absolutely no notice of either of these assessments until after the time for appearing had expired. We, therefore, have this to say, that if these pipe lines were benefited, there can be no doubt of the right to reassessment under Section 6 of Act 15, as amended by said Act 83 of the year 1925.

But it is submitted that the attempt of the Legislature, under Act 83, to confirm an assessment void by reason of misdescription, is ineffectual and can add nothing to it, and should not stand as a bar to bill in equity to remove the cloud from the title of the petitioner.

V.

There Were Two Distinct Pipe Lines In the District When Assessment Was Made, Aggregating 25.49 Miles In Length. The Assessment Was Against Twelve Miles. This so Indefinite as to be Void and Incapable of Being Cured by the Legislative Act.

A very clear summary of the decisions of the Arkansas Supreme Court is contained in Woodall *vs.* Edwards, 83 Ark., 337, with references to insufficiency of description in tax proceedings.

In that case, Hill, Chief Justice, said (omitting quotation marks):

> This case was tried on an agreed statement of facts, which will be set out by the reporter. The tax title of the appellant was held void, and further that it *was not color of tax title* enabling the *statute of two years's possession under a tax sale to be effective.* And that is the sole question on appeal.

The description in the deed is as follows: "Part N. E. ¼, Sec. 30, T. 9 N., R. 9 E., containing 70 acres." This description followed the description in the assessment.

In Hershey *v.* Thompson, 50 Ark., 484, it was decided that a description as follows: "Part of the S. E. ¼ of Sec. 15 in T. 8 N. and in range 32 W.," was void, in that it failed to identify the part assessed from other lots or tracts as required by the statute, and that in fact it was no description.

In Schattler *vs.* Cassinelli, 56 Ark., 172, this description was considered: E. part of N. ½ of S. E. ¼ of S. E. ¼" of section containing 7.54 acres, and the court said:

> "A description which can be understood and *made definite only by judicial construction does not accomplish the essential functions* of a description in *tax proceedings;* and, as the law requires one to be made for the practical purpose of protecting the owner, any that conveys no certain meaning to persons ordinarily versed as to such matters does not answer the requirement."

In Cooper vs. Lee, 59 Ark., 460, a description of "the N. N. E.," of a section containing 87.19 acres in a tax sale was held void, and the court approved Judge Cooley's statement of the purpose of the description of lands in tax proceedings: "First, that the owner may have information of the claim made upon him or his property; second, *that the public*, in case the tax is not paid, *may be notified what land is to be offered* for sale for the nonpayment; and, third, that the purchaser may be able to obtain a *sufficient conveyance.*" The court said:

> "A description which is intelligible only to persons possessing more than average intelligence, or the use and understanding of which is confined to the locality in which the land lies, is not sufficient."

In Rhodes *vs.* Covington, 69 Ark., 357, the court held that this description, "L. B. R. W. Pt. southwest quarter of section 30, township 5 north, range 4 west," was void, even assuming that "L. B. R." meant the left bank of the river on which the land was situated, as it was vitiated by the terms "W. Pt." which left an indefinite quantity.

In Dickinson *vs.* Ark. Imp. Co., 77 Ark., 570, the description in question was as follows: "Part East ½ N. E. ¼ Sec. 32 T. 12 S. R. 1 W., 55 acres," and the court said that the *two-year statute of limitations* did not run under a deed containing *such description*, because "a deed failing to describe the land is equivalent to no deed at all. In order to put this statute in opera-

tion, the adverse holding must be under a deed purporting to convey the land pursuant to a tax sale. The deed under which appellants claim to have held *does not purport to convey the title to any land*, because none is described therein.

In Buckner *vs.* Sugg. 79 Ark., 442, the Court said:

> "It is well settled, not only by the decisions of this court, but by the adjudged cases in the courts of other States, as far as we can discover, that, in order to make a *valid assessment and sale of land for taxes, the land must be described with certainty* upon the *assessment rolls* and in all subsequent proceedings for the enforcement of payment of tax. The chief reason for this requirement is that the *owner may have information of the charge upon his property.* It has sometimes been said that *a description that would be sufficient in a conveyance between individuals* would generally be sufficient *in assessments for taxtion.* We do not, however, consider that the safe test. The description in tax proceedings must be such as will fully apprise the owner, without recourse to the superior knowledge peculiar to him as owner, that the *particular tract* of his land *is sought to be charged with a tax lien.* It must be such as will notify the *public* what *lands* are to be offered for sale in case the tax be *not paid.*
>
> "The two-year statute is the shortest limitation statute barring recovery of land. It applies to void tax sales as well as valid ones, yet it must not be extended to deeds void for uncertainty in description of the land conveyed. Such a deed can not aid or explain possession, for it lacks an identification of any land.

> *Neither the owner nor the public were bound to take knowledge of any tax proceedings against land so described* and the title alleged to be conveyed by such deed, and *hence possession under it* would confer *nothing more* than possession without any deed, and it would require seven years of adverse possession of the land to give title."

The foregoing summary just qouted from Woodall *vs.* Edwards, 83 Ark., 334, is abundantly sustained by the following subsequent authorities:

A tax deed which describes the land sold for taxation as part of a certain forty-acre tract is void on its face.

> Penix *vs.* Rice, 93 Ark., 176, 124 S. W., 747.
> Morris *vs.* Eagle, 94 Ark., 180.

Where the lands sold for delinquent taxes were described in the tax proceedings and in the deed to the purchaser as "W. pt. S. E. S. E. 20-20-33, 7.60 acres," such description was insufficient, and the sale void therefor.

> Hewett *vs.* Ozark White Lime Co., 120 Ark., 528, 180 S. W., 199.

The case of Hershey *vs.* Thompson, 50 Ark., 484, *supra,* is one of the most illuminating decisions of the Arkansas Supreme Court upon this question, announced through Judge B. B. Battle, one of the State's former greatest judges.

In holding that a description "Part of the S. E. ¼ of N. E. ¼ Section 15, T. 18 N. R. 32 W.," was void in a tax deed, Judge Battle said:

> "In the assessment of lands for taxation the statutes of this State provide that the description of each tract or lot of real property shall be such as to identify it and distinguish it from all other tracts or lots. The object of such description is to inform the owner and all other persons of the tracts and lots assessed and the amount of taxes levied thereon. From the description given of the tract purchased by appellant for the taxes of 1878, it cannot be ascertained what part of the southeast quarter of the northeast quarter of said section fifteen, containing five acres, was assessed. In fact, there was no description, and the assessment of this indefinite and unknown part was void."

Judge Battle further said, in denying a claim under a State statute for betterments:

> "To successfully assert a claim for improvements, it is said, an occupant must ordinarily show not only that he occupied and claimed the land in good faith, but also under color of title, *i. e.*, under some instrument or paper writing presenting the appearance or semblance of title. A deed which contains no designation or description by which the land intended to be conveyed can be identified presents no semblance or appearance of title, and does not constitute color of title. Such deeds themselves put the holder on notice that they have no title. They do not purport to convey anything and are void. Such is the deed under which appellant claims. No one can be heard to say he has been misled by such a deed."

It is therefore submitted that the attempt of the Legislature to confirm the assessments in the case at bar against 12 miles of pipe line, which was a part of 25.49 miles of pipe line in the district, was ineffectual.

As to the wire, the evidence shows there is a single strand running almost at right angles from the pipe line, from Mandeville to Texarkana, and thence to Index, a distance of 17 miles, and was not upon the right of way of pipe line, and the assessors undertook to assess it jointly with 12 miles of pipe line. The pipe line did not own the right of way and the assessment does not purport to assess all the pipe in the district or the right of way upon which two distinct pipe lines were laid.

Aid from Cooley on Taxation, Vol. 1, 3rd Edition.

Mr. Cooley, in his work, Cooley on Taxation, 3rd edition, Volume 1, page 738, says:

> "The authorities in general are imperative in holding that an unauthorized division of a tract in the assessment, which tract has no known legal subdivisions, is as fatal as an unauthorized grouping of distinct parcels would be."
>
> Reading *vs.* Finney, 73 Pa. St., 467.
>
> Wyman *vs.* Baer, 46 Mich., 418.
>
> Morgan *vs.* Smith, 70 Tex., 637.

Mr. Cooley says, with reference to amendments of assessments, in Cooley on Taxation, Volume 1, 3rd edition, pages 544-555:

> "Thus it has been held in Vermont that if a tax sale is fatally defective by reason of the fail-

ure of the town clerk to certify in his record that the advertisements were published as required by law, the clerk cannot make it good, by amending his record after the time for redeeming from the sale has expired. The reason is that the owner, relying upon the record, may have omitted to redeem, inasmuch as his land has not been legally sold.

"No amendment can make valid a tax sale that was void for want of a proper description of the land in the assessment and subsequent proceedings."

Roberts *vs.* Chan Tin Pen, 23 Cal., 259.

We quote from Mr. Cooley's Work on Taxation, Volume 1, 3rd edition, page 742:

"The purposes in describing the land are: First, that the owner may have information of the claim made upon him or his property; second, that the public, in case the tax is not paid, may be notified what land is to be offered for sale for the non-payment, and, third, that the purchaser may be enabled to obtain a sufficient conveyance."

On page 744 we quote:

"The reason for this is the recognized principle that it is the land, and not the owner, which is chargeable and to be charged with the tax. It must, however, be susceptible of identification as the land assessed, otherwise the sale would be void."

Woodsie *vs.* Wilson, 32 Pa. St., 52.

And we quote further, on page 748 of Mr. Cooley's work on Taxation:

> "But where the description in an assessment could apply to either of two pieces of land, it is void for uncertainty, *as is also a description, which is part of a section, block or lot, without showing how much or giving boundaries.*"
>
> Texarkana Water Corporation *vs.* State, 62 Ark., 188.

See many cases sustaining this principle in Footnote, Volume 1, Cooley on Taxation, 3rd Edition, page 748.

Legislature Cannot Confirm an Assessment Void for Insufficiency of Description.

With reference to the special curative acts, purporting to validate the assessment against the pipe line, we quote from Cooley on Taxation, 3rd edition, Volume 1, page 514:

> "One very precise limit to the power to cure these proceedings is this: they cannot be cured when there was a lack of jurisdiction to take them. This is a rule applicable to every species of legal proceedings. Curative laws may heal irregularities in action, but they cannot cure a want of authority to act at all. And in this regard the rules which apply to retrospective and to prospective healing acts are the same."
>
> Wall *vs.* Wall, 124 Mass., 65.

It will be remembered that there were two pipe lines owned by the Prairie Pipe Line Company when the assessment was made in 1920, aggregating 25.49 miles

(R., 73). They were separate and distinct, and differed slightly in length. One was laid in 1909 and the other in 1915 under land by virtue of permissive contracts with the owners. The right-of-way contract provided that the pipe line could lay other pipe lines under the surface of the same lands upon payment of a like consideration as had been paid (R., 86). The assessment being against 12 miles of pipe line, it cannot be determined which of the pipe lines or which miles of pipe were intended, and therefore the assessment was invalid and the curative acts attempting to validate the assessments were void.

VI.

Questions of Estoppel.

The Court of Appeals Misunderstood the Facts Upon This Question, and Misapplied the Legislative Acts Involved.

This case was argued orally and by brief at St. Paul in the United States Circuit Court of Appeals, before Stone and Lewis, circuit judges, and Symes, District judge, May 26, 1926 (R., 243), and the opinion was filed by District Judge Symes April 18, 1927 (R., 244).

The recitals of the opinion, it is respectfully submitted, show that the facts in this case were misunderstood by the court of appeals, and as a consequence the decision of the lower court was reversed.

One of the propositions involved under this heading was whether or not the petitioner herein was estopped from prosecuting this suit for cancellation of the as-

sessment of July 24, 1920 (R., 55), for alleged benefits of $60,000 on 12 miles of pipe line and wire, as a cloud upon petitioner's title thereto, on the ground that it had failed to avail itself of administrative remedies providing for the correction of the assessment.

See second paragraph (giving the right of appeal from the commission to the county court—R., 200) of Section 7, Act 153, approved March 5, 1915.

Also (R., 215) (making the decision of the commissioners final), Section 6, Act 15, approved January 29, 1917.

We now quote from the opinion of the court of appeals:

> "The Miller County Highway District was created by a special act of the legislature of Arkansas in 1915, and empowered to construct 60 miles of highway and a bridge over the Red River. The usual district organization, consisting of a commission of three resident land owners, was provided for, with the power and duty to appoint three assessors to assess all benefits accruing as a result of the improvements to the real property within the district, including railroads, pipe lines, etc., and all other franchises connected with the realty in said district. Later it was concluded that the bridge and roads could not be constructed within the limit of cost prescribed by the original act, to-wit, 15 per cent of the value of the real property subject to assessment; so the law was reenacted and amended by Act No. 15 of the year 1917, and additional land included. This amendment ratified and confirmed the assessment theretofore made by the assessors, and provided for a similar assess-

ment on the new lands, and increased the authorized mileage to 75 miles" (R., 244).

This statement is literally correct, but the assessment that had been made, which this act attempted to ratify, was for benefits to accrue from building 60 miles of road and a bridge across the river, and the amount assessed against the 12 miles of pipe line was $59,340. Its date was April 29, 1916 (R., 48). A bridge district was organized, under Act 16, entitled "An Act to Create Red River Bridge District," covering the same territory, approved January 29, 1917, and providing for assessment of benefits on account of the bridge. This bridge district is involved in this case only in so far as the fact exists that it was made the subject of a new district, under a distinct act (R., 223).

Did the Arkansas Legislature have the power to adopt the assessment of benefits on account of 60 miles of highway and a bridge across Red River, as the benefits under changed plans for 75 miles of highway without the bridge?

It has been shown in the testimony and all the proceedings in this case that the assessment ratified, however, is not the one involved in this case. The assessment in controversy was made July 24, 1920 (R., 55), and the 12 miles of pipe line and wire were reassessed benefits at $60,000 (R., 50). The Board of Commissioners ordered a general reassessment of all property in the district on account of change of plans (R., 50).

The authorty of the Board of Commissioners to authorize the assessors to make this reassessment is

contained in the same section of Act 15 (R., 214), Section 6, which ratified the first assessment.

> "If either the board or any individual thinks that by reason of said changes of the plans the assessment heretofore made has become inequitable, *a new assessment of benefits shall be ordered by the board*, and the board may, not oftener than once a year, order a reassessment of the benefits in the entire district; but in no event shall the total amount of the assessed benefits in the district ever be diminished."

The court of appeals also erred in the following statement (R., 247):

> "The original act (153) provides an opportunity for all property owners aggrieved to appear before the Board of Assessors and have a hearing, with right to appeal to the Commission, and from the Commission to the *county court*. The appellee never availed itself of this remedy. *They say that because they were a non-resident corporation, they are not bound thereby.* The record shows that they had employees in the district, including a taxing officer, charged presumably with the duty of looking after tax matters. Their predecessor in title, the Prairie Pipe Line Company, paid three or four installments of these taxes without protest. There is testimony that Mr. Hilford, who at one time had charge of the pipe line property in Miller County, knew the assessments were being made. Another witness testified that a letter was written by the *Tax Commission* to the pipe line company, giving them the information as to both the county, State and road taxes,

under date April 5, 1917, receipt of which was acknowledged."

Aside from the fact that the original assessment, which was ratified and remained ratified, until it was abrogated, July 24, 1920, by the Commissioners under authority of Section 6, Act 15, it is contended here, as it was in the court of appeals, that the remedy of appeal from the Commissioners to the county court was not only insufficient, but was absolutely void, as the Arkansas County Court has no jurisdiction beyond the limited powers given by the Constitution as a probate and admisitrative court.

This question is concluded by a decision of the Supreme Court of Arkansas, in the case of Morgan Engineering Company *vs.* Cache Drainage Dist., 115 Ark., 437, at page 441, where it is held that jurisdiction cannot be conferred upon the county court to settle a controversy arising under the administration of a special legislative act.

This interpretation by the Supreme Court of Arkansas was fully recognized as controlling in the fact that Section 2 of Act 83, approved February 14, 1925, amending the last paragraph of Section 6, Act 15, provides for an appeal from the Commissioners to the chancery court, a court of general jurisdiction (see said Act 83, Section 2, in appendix to this brief, as it is not copied in the record), but that remedy of appeal by said amendment was too late to afford relief under either the first or the second assessment.

The thorough, able and exhaustive opinion by Chief Justice Taft, in Road Improvement District No. 2,

Lafayette County, Arkansas, petitioners, *vs.* St. Louis Southern R. R. Co., 257 U. S., 547-562, involved the interpretation of Acts of Congress authorizing removal of causes from State courts, and this decision was cited by respondents in the court of appeals as holding that the county court had jurisdiction to entertain an appeal from the Commissioners. There is a clear distinction between the jurisdiction of the county court, Chapter 81, Title "Highways," Subdivision 7, Crawford & Moses Digest of the Statutes of Arkansas, 1921, whereby the county court is authorized to build a road under its constitutional jurisdiction over public roads, and that in this case, where appellate jurisdiction is attempted to be conferred by legislative act upon a controversy over assessments arising under a special legislative act.

The Federal courts will accept the interpretation of the supreme court of a State upon its statutes.

A. G. Risty *et al. vs.* Chicago, Rock Island & Pacific Railway Co., 270 U. S., 378-390 (opinion by Mr. Justice Stone).

With reference to that part of the opinion of the court of appeals, that there were employees in the district, including a taxing officer (charged presumably with the duty of looking after tax matters), we have to say there were two taxing officers of the pipe line company, mentioned in the evidence; the first named, Van Tuyl (dead when the evidence was taken in this case), and his successor, H. C. Black. They had no notice of either the assessments within the 30 days' time in which to ask for relief.

The letter referred to which Van Tuyl received from the deputy collector, A. B. Little (not Tax Commission), was dated April 15, 1917, notifying him of the error committed by the collector, in furnishing a tax list for the year 1916, in which the collector had overlooked, including the special road tax of $395.20 (R., 75). This was the first actual knowledge that the petitioner had of the road tax, and the first assessment of benefits had previously been filed April 29, 1916. In the statement furnished Mr. Van Tuyl it was shown erroneously that the entire road tax would be paid out in 15 annual payments of $395.20, total $5,934 (R., 78). Each act, 153 and 15, also furnished a strong regulation compelling the payment of the road taxes when the general taxes were paid by any person or company liable for the road tax, by fixing a penalty against the collector of $100 in each case if he received the general taxes without the road tax. This would have incurred a penalty of 25 per cent on the general taxes if the payment had not been made.

With reference to that part of the statement above-quoted, "the Prairie Pipe Line Company (predecessor of the Standard) paid three or four installments of these taxes without protest," the taxes were paid for three years, under the circumstances and requirements stated above, for 1916, $395.20; 1917, $395.60; 1918, $406.01 (Black R., 125, 126).

The court of appeals erred in considering the payment of taxes for these three years on the assessment of 1916 as an estoppel to contest the second assessment of 1920.

Under the new assessment of 1920, the taxes were increased against the pipe line to $600, none of which have been paid.

Then suit was brought by the Prairie Pipe Line Company to enjoin the collector from not accepting the general taxes without the road taxes, and the supreme court sustained the contention, and required the collector to so receive said general taxes.

Eason *vs.* Prairie Pipe Line Company, 149 Ark., 669.

Road taxes have been assessed annually since that time, but no payment has been made by the pipe line company.

With reference to the knowledge of Mr. Black, who succeeded Van Tuyl, he testified that he came to Texarkana in the spring of 1921 to pay the general taxes, and for the first time he learned that the second general assessment of benefits had been made the previous year, July 24, 1920, which was too late for relief by the Commissioners.

As to the reference in the opinion above quoted to one Hilford being in charge of the pipe line property in Miller County, and knew the assessments had been made, there is no direct or positive testimony that he knew the assessments had been made. He was dead at the time the trial took place, but it was shown by Black that he had nothing to do with accepting notice or reporting upon the subject of taxes, and that his only duties were to see that the pipe lines were in shape, and that the station ran when he was told to run it (Black., R., 124).

With reference to that part of the opinion of the court of appeals above quoted, "they (the petitioner) say because they are a non-resident corporation, they are not bound thereby" (the assessment); the court of appeals misinterpreted the plaintiff's contention. The plaintiffs claimed that by reason of its nonresidence, it had no actual notice of the assessment (which was published in a local paper with limited circulation), and it was not estopped from instituting this suit to prevent the taking of its property without due process of law, and denying it the equal protection of the laws. This was the course pursued in a similar case, Thornton *vs.* Road Improvements District No. 1, Clark County, Ark., 291 Fed., 527. The opinion was announced for the United States Circuit Court of Appeals by Judge Sanborn, and the other judges with whom he sat in that case, were Circuit Judge Kenyon and District Judge Symes.

We have thus gone into some detail for the purpose of showing that if there had been no second assessment, which superseded the first, that there was no adequate remedy provided for relief in the first assessment before the board of commissioners, and by appeal to a court which had no jurisdiction.

No Adequate Remedy was Provided for Relief Against Errors in the Second Assessment of July 24, 1920.

The administrative remedy provided for under this assessment in Section 6, Act 15, affords no more relief than Section 7 of Act 153, governing the first assessment. The court of appeals did not mention the

alleged remedy provided for correcting the second assessment, which is the only assessment that is outstanding.

The assessment of 1920 took the place of the assessment of 1916, under which assessments had been paid for 1916, 1917 and 1918, but since the assessment of 1920 no assessments have ever been paid by anyone under the 1916 assessment.

Under Section 6 of Act 15 (R., 215), a complaining taxpayer was permitted to appear before the commission for the purpose of correcting unequal assessments, but said commission only had the right to increase or decrease the assessment (R., 188), and did not have the right to give full relief where there was no benefit. The act (R., 215) reads:

> "But in no event shall the total amount of the assessed benefits within the district *ever be diminished;* and if any future assessment shall be for an amount less than the preceding assessment of benefits, such assessment shall be void, and the preceding assessment shall be continued in force."

Finally, it was provided, at page 215:

> "Any property owner aggrieved by the action of the board of assessors may appeal to the commission, within thirty days, and the commission shall meet at some convenient time and hear all appeals, and determine the same, *and their decision shall be final.*"

It is submitted that no one should be expected to present his claim before a board of commissioners

whose authority to make changes was so hedged and obstructed by the fact that the entire assessment could not be reduced, and whose decision would be final.

As previously shown, the pipe line owned two adjoining tracts, near Mandeville, one containing 40 acres and the other 31.5 acres, upon which the tanks and pumping station are erected. They were assessed both in the first assessment and in the other assessment, as other lands in the district (R., 67). The assessment against this land is not in controversy.

With reference to the contention of Miller County Highway and Bridge District that the petitioner predecessor Prairie Pipe Line Company did not avail itself of the administrative remedies provided for in Section 7 of Act 153, approved December 5, 1915, by going before the commissioners and presenting the complaint and appealing to the *county court*, we have answered fully in the foregoing brief upon the merit of the proposition, as though there had been no new general assessment. We should have been content to submit the question solely upon the fact that there was a reassessment made on July 24, 1920, by authority of the same Section (6) of Act 15, which took the place of the first assessment. The second assessment was made three years thereafter, and gave a purported remedy for contesting it, and we think it was error for the court of appeals to have rested its decision in any respect upon the failure to appear before the commissioners, from which an appeal could be made to a county court which had no jurisdiction to hear it. The court undoubtedly overlooked the fact that there was

a reassessment and a right to reappear and make a contest before the commission.

But as to that, we have already answered in the foregoing argument. The provision with reference to contesting the new, substituted reassessment, only provides for a complaining taxpayer to appear before the commission, whose ruling should be *final*.

The remedy provided by the second assessment is more faulty than the first. It was not mentioned by the court in its opinion, and seems to have been entirely overlooked. We are led to believe that if the court had looked at that provision, it would not have laid any stress at all on the failure of the petitioner to submit *all its rights to a final* determination by the commission.

The authorities, with reference to inadequacy of the remedy at law and the right to proceed in equity in this kind of case, seem to be one way. We will not quote from them at length, but will submit the citations:

Road Improvement District No. 1, Franklin County, Arkansas, *et al.*, appellants, *vs.* Missouri Pacific R. R. Company, appellee; decided by the Supreme Court of the United States, April 18, 1927; 274 U. S., 188-195.

George Wallace *vs.* Walker D. Hines, 253 U. S., 782; opinion by Mr. Justice Holmes.

C., R. I. & P. *vs.* Risty, 270 U. S., 378.

Munn, county treasurer, *vs.* Des Moines National Bank, 18 Fed. Rep., 2d Series, 269.

Nevada-California Power Co. *vs.* Hamilton, county treasurer, 235 Fed., 316.

Thomas *vs.* Kansas City Southern Ry. Co., 277 Fed., 708.

Kansas City Southern Ry. Co. *vs.* Ogden Levee Dist., 15 Fed. Rep., 2d Series, 637.

Kansas City Southern Ry. Co. *vs.* May, Volume 2, Fed. Rep., 2d Series, 680.

C., R. I. & P. *vs.* Risty, 297 Fed., 710.

C., R. I. & P. *vs.* Risty, 282 Fed., 364.

We therefore respectfully submit that the United States Circuit Court of Appeals was in error in reversing the judgment of the District Court of the United States for the Western District of Arkansas, Texarkana Division.

T. M. MILLING,
W. H. ARNOLD,
W. H. ARNOLD, JR.,
DAVID C. ARNOLD,
Counsel for Petitioner.

March 21, 1928.

THE TESTIMONY.

It is necessary that we should give a summary of the testimony introduced in this case bearing upon the material points. The assessors were required by the legislative acts to make assessments of the lands and utilities in the district, according to the benefits received, and their method and the discrimination resulting is shown by the testimony of one assessor (Geo. T. Conway), who testified (R., 57-72) as follows:

George T. Conway.

"The territory outside the city was divided into zones, the land within 1 mile of the road was zone 1; within 2 miles, zone 2; within 3 miles of the road, zone 3. The benefits were assessed at $30.00 per acre for zone 1, $25.00 per acre in the second zone, and $20.00 per acre in the third zone. We did not take into consideration the value of the land itself, but simply its location with reference to the road, and did not take into consideration the dwellings. There were plenty of houses throughout the district, and a great part of this land was in cultivation" (R., 57-58).

With reference to the pipe line, the witness said:

"The assessment was extended against poles, pipe, wires, plant, tankage, etc., in the district" (R., 59). "Could not say whether there were any poles" (R., 59).

As to what pipe there was there:

"Well they come into Miller County at Red River, and went out of Miller County at the lower end" (R., 59).

Assessments of Benefits Palpably Arbitrary.

"We figured that a pipe line and what they had there would derive that much benefit from this road. We took into consideration all that we thought would have any bearing, and the elements were, we considered these people, the

> Prairie Pipe Line Company, their pipe line and their telephone line, to their pumping station and tanks, which was practically wholly within this district, would receive benefits from this road amounting to $59,340" (R., 60).

Later the witness showed that the benefits against land of the company on which their tanks and buildings were located, consisting of 71.5 acres near Mandeville, were assessed separately, $30 per acre, the zone plan (R., 67-69), and no contest is made herein as to that assessment (R., 66).

The foregoing assessment was made April 29, 1916 (R., 48), under Act 153, providing for construction of sixty miles of road and a bridge across the river (R., 61).

Four or five years later (the witness stated), July 24, 1920 (R., 55), there was a reassessment made by order of the Board of Commissioners. The lands outside the city were assessed in the same way as before (R., 62, 69), and Prairie Pipe Line Company, 12 miles pipe line, and twelve miles telegraph and telephone line, $5,000 per mile, or $60,000 (R., 62). This took the place of the first assessment (Josephs, Secretary of the District) (R., 50).

The benefits on lands in Texarkana were arrived at *ad valorem* basis (R., 62). This was an entirely new thing in this country, and we did not know where we were (R., 63). The benefits on city property was assessed the same as *ad valorem* valuation (R., 65). The pipe line was not assessed on *ad valorem* basis (R., 69).

"The roads as originally laid out did not conform to the roads as built and there were some that were in zone 3 that should have been in zone 2 and *vice versa*, and these readjustments were made (by a general readjustment, July 24, 1920), so there was an equal benefit according to the zone as they were finally built" (R., 68).

"The zone system was followed in the reassessment as in the first, also was applied to the 71.5 acres, the plant of the pipe line $2,160 (R., 69). The reassessment was made general under Act 15, approved January 29, 1917, by authority of the same section (R., 212-223) which attempted to ratify and confirm the first assessment of benefits." The language authorizing the reassessment, "And if either the board or individual thinks that by reason of said changes in the plans the assessment heretofore made has become inequitable, a new assessment of benefits shall be ordered by the board."

The assessor said the total benefits to the pipe line (which did not include the land on which plant is located, assessed separately), Prairie Pipe Line Company, 12 miles pipe line, and 12 miles telegraph and telephone lines, $5,000 a mile, or $60,000 (R., 62).

"Q. How did you arrive at the benefits of $5,000?

"A. Because we thought they were benefited that much. We thought a pipe line coming in and a telephone line would be a greater benefit than a telephone line located where they didn't have any road. Another thing, they had the pumping station and they would use the road in going to and from their work.

"Q. The Prairie Pipe Line Company owned certain lands out here at Mandeville?

"A. I am not positive of that" (R., 63).

F. Ray McGrew.

I am the vice-president of appellee, and have been such since its organization. The Standard Pipe Line Company, Inc., purchased the pipe lines of the Prairie Pipe Line Company in Arkansas in December, 1922, at which time there were two lines of eight-inch pipe in this district, and later the Standard Pipe Line Company, Inc., laid additional lines of pipe, at which time we acquired from the various owners of property by purchase the right to lay these additional lines. Prior to the time we constructed the additional lines (which was in 1923), we negotiated for the additional right-of-way upon the same consideration as when the original lines were laid, *and when these additional lines were laid in 1923 we paid for the privilege the same as was first paid.* I am familiar with the lines of road and boundaries of the road district in a general way, and the value of this pipe line has not been enhanced by the construction of the roads. There are no roads that you might consider as paralleling our lines. It might be said that when a road parallels our pipe line right-of-way for a limited distance at a remote point, remote from the pipe line, in the matter of pipe line construction consideration to roads is never given. To project a pipe line from one point to another, generally we put a straight rule on the map and let it fall where it may, and that is the point where we generally construct the line, notwithstanding any con-

nection with good roads. The shortest distance that a pipe line can be constructed between two points is the best. It shortens your line of transportation, increasing volume and lessens the cost. Our transportation is carried on chiefly over the right-of-way of the pipe line, and if we were to dispose of this line to someone, the fact that these highways existed would not have any bearing upon its value. *Good roads might be construed in connection with the railroads as feeders and act as a factor in increasing the revenue of the railroad; that is not true in connection with the pipe line. By no stretch of imagination can I figure that the improvement of roads within this district has been of any benefits.* I have different ideas from a personal view point as to the necessity of good roads. The lines which we purchased from Prairie Pipe Line Company were erected in 1909 and 1915, which was before the construction of the roads by appellant. *We have never paid any taxes to appellant road district. At the time of the assessment of benefits made in July, 1920, we neither had the right of way nor privilege to lay the additional lines in 1923,* nor the materials with which to construct the same. *Line walkers usually patrol about forty miles of pipe line, usually covering the same twice a week.* As to practical pipe line construction, I have had twenty-five years' experience, and have occupied every position that is available on pipe lines with one or two exceptions. The pipe line of Standard Pipe Line Company, Inc., enters Arkansas about 12.38 miles northwest from De Queen at the Oklahoma-Arkansas State line, and runs southeast to a point on the Arkansas-Louisiana State line,

near Ida, *and said company is engaged in no business whatever except the transportation of oil from the Oklahoma-Arkansas State line to some point in Louisiana.* Generally the life of a pipe line is *twenty years.* In 1920 replacement cost of an eight-inch pipe line would be $11,500; in 1915 it would be between $8,000 and $9,000 per mile. Depreciation is figured at five per cent, and these lines that were put down in 1909 and 1915 were not worth as much in 1920 as they were when they were put down. The value of these lines in 1920 would be the difference in construction costs less depreciation. There have been no major repairs necessary on the pipe line in this district *with the exception of the removal of a piece of line near the river; a part of that line was taken up and placed on a new right-of-way.* The changes were not done on account of bad conditions alone, but in order to meet our condition at the river we realigned our pipes and at the same time took advantage of the repairs that were necessary, and there have been no major repairs, no serious breaks or anything of that kind since we have been operating the line. Unless the roads were constructed especially for the purpose of pipe line construction, it would not make any noticeable difference in the cost of construction, and the only difference would be in the item of hauling pipe and the construction of the pipe line (R., 97-109). The *cost of stringing on eight-inch* pipe line will run *between $375 and $400* (R., 104).

It is a general practice of the pipe line operation to have what is called a line walker. They are usually called upon to patrol approximately forty miles and

that is usually covered twice a week, that is a round trip within the week. The patrol is to detect small leaks (R., 100).

We have one automobile located in this district . (R., 100).

Whenever there is pipe line work, there are generally workers, no matter where the work is done. *There are a certain class of people who follow the pipe line business just like they follow the circus,* and when we have a camp and construction work in a place where you haul the men, the laborers are paid the same. The crossing of the improved highways presents an additional expense to us, in that we have to meet certain expenses and requirements of the good roads. To construct a pipe line across an improved highway, you have to approach the highway on either side, handle the embankment in a particular manner in order to prevent caving (R., 97-109).

W. B. Fulton.

W. B. Fulton testified that he is Chief Engineer of Standard Pipe Line Company, Inc., having served in that capacity since the organization of said company, and had eight years' experience with said company and Standard Oil Company of Louisiana, and was familiar with the location of the pipe line within Miller County Highway and Bridge District, *and as of July 4, 1922, there were 25.49 miles of pipe line within said district* (R., 81), and that *the telegraph and telephone line came down over the Southwestern Bell Telephone Company's poles,* and that said company *owned no poles within said district, but leased the right from the tele-*

phone company to string wires on their poles (R., 81). The pipe is made of rolled steel, and is bought from the mills and delivered at our unloading points, which is generally on siding along the railroad, and they are unloaded and stacked. The pipe is buried from eighteen to twenty inches. Inspections of the pipe lines are made by an employee called the line walker, and he has a section that he covers and makes the round trip approximately once a week. He carries his own tools with him for repairing and he walks the entire line. He never digs up the line, but notices from the condition of the soil whether there are leaks. The roads have not increased the value of the pipe lines, nor the volume or capacity of the pipe lines (R., 82). The Standard Pipe Line Company, Inc., *acquired this property in December, 1922,* and there *have been no major repairs* (R., 82). The average length of a joint pipe is twenty-one feet, and the joints are connected up with collars, and they are screwed into these collars. The line walker has his caulking tools and caulks these joints. None of the roads in this district parallel the said pipe line, and the expense of upkeep has been no less now than it was before said roads were built. The Standard Pipe Line Company, Inc., receives no products for transportation through this district or through this line, and does not sell any of its products in Arkansas, and has no commodities for sale whatever except transportation (R., 82-83).

On cross-examination the witness (Fulton) testified:

At the present time there are 51.25 miles of pipe laid in said district. During the year 1920 there were

25.49 miles in said district (R., 85). There were two lines in said district during the year 1920, and now there are four lines of eight-inch. The telephone line was built on the right-of-way in 1923, and I have no knowledge of a telephone line prior to that time (R., 85). In building the line in 1923 we unloaded our pipe at the railroad sidetrack and hauled it out and strung it along the right-of-way. The pipe was unloaded at Paup Spur, Texarkana and Genoa, and we used trucks and teams over the roads. On account of the expense of rehandling the pipe, it was not our custom to unload the pipe from trucks on the side of the gravel road and then haul the pipe down the right-of-way with teams (R., 87).

On redirect examination, the witness testified:

If trucks hauled the pipe, they were the trucks of appellee, upon which *Arkansas license had been paid* (R., 94). The hauling of this pipe and the construction of a new line does not benefit the old line (R., 94). The roads have not helped us in the construction of a new line, and they did not benefit the old ones. It is not a pipe line until you get it in the ground. We pay no attention to good roads, but mainly to the shortest distance between two points. The main advantage to a farm is the advantage the farmer receives from hauling his products over the road to market. We do not haul any of our products over the road (R., 95).

At this point there was introduced in evidence the contract for right of way, evidencing the rights of the appellee to lay and maintain its pipe lines under lands within said district (R., 95).

H. C. Black.

I am tax commissioner for the Prairie Pipe Line Company, and have been since July 1, 1919, and the entire system of Prairie Pipe Line Company is within my jurisdiction, including the line within appellant road district, up until the time Prairie Pipe Line Company sold the same to Standard Pipe Line Company, Inc., December 1, 1922, at which time there were two parallel eight-inch lines, the first of which was laid in 1909, and the second of which was laid in 1915. In 1920 the telegraph and telephone line paralleled the pipe line from the Louisiana line up to Mandeville, and *then it came into Texarkana over some other poles, and from Texarkana went north to Index. It was just a wire, no poles* (R., 127-128). We paid an annual rental for the permission of having our wires attached to the poles of some other company. There was just one No. 9 steel wire of the value of $15 per mile (R., 128). Seven years have passed and no suit has been brought against the Prairie Pipe Line Company for the collection of any assessment by the appellant road district (R., 128). Each pipe line occupies a space of not more than nine inches wide, and the *acreage actually used by the company is about 9/100 of an acre to the mile* (R., 128). The earnings of the pipe lines depend on the charges received for the transportation of crude petroleum oil that has been tendered to it for transportation as a common carrier, depending upon production and the demand, no inexhaustible field of petroleum has even been discovered.

The common experience of mankind is that the deposits of oil are being exhausted, and that the old fields are declining in production and new production coming on. When oil ceases to be produced along this line, the system will have no value beyond junk value. It will have no value for transportation purposes (R., 128-129). The construction of roads will not extend nor increase the life of the pipe line.

No Notice of Assessment—The Authority of J. D. Hillford—Explains Three Annual Payments.

I have been tax commissioner for Prairie Pipe Line Company since July, 1919, having charge and supervision of all activities of the company with reference to making of renditions of its properties, the payment of taxes upon its properties, and the handling of every item and form of tax with the exception of the income tax (R., 121). *J. D. Hillford was the local workman in charge of the pumping plant in Miller County, Arkansas, in 1920,* and his only *duties were to have charge of the operation* of the pipe-line properties; he did no business for the company, conducted no business for the company, *and had no authority beyond an operating superintendent, and he was not designated as an agent for this company;* he had nothing to do with any item of business with the Prairie Pipe Line Company (R., 124). *The Prairie Pipe Line Company did no business in Arkansas, maintained no office, paid no franchise tax in the State of Arkansas, and was engaged solely in the transportation of crude oil in interstate commerce.* The *movement* of the oil through

the pipe-line system was *under the pipe-line dispatcher at Independence, Kansas.* The only thing *Mr. Hillford had to do was to see that the pipe lines remained in shape, and that the station ran when he was told to run it* (R., 124). *Mr. Van Tuyl was the tax commissioner at the time of the passage of the first act creating Miller County Highway and Bridge District.* In the year 1916 we paid assessment of $395.20 against the pipe lines, and the assessment for 1917 was $395.60, and the assessment for 1918 was for $416.01 (R., 126), which three assessments were the only ones paid by Prairie Pipe Line Company (R., 126). I never heard of the assessment of benefits in 1920, and never had any knowledge of it until in the latter part of March, 1921, when it was discovered that the taxes had jumped from $418 to $600. On investigation I *found there had been a reassessment some months* before, along in July the previous year (R., 127). After I became tax commissioner for the company, I investigated the tax as levied by Miller County Highway and Bridge District, and I determined not to pay the same any *further and attempted to pay the general* taxes without paying the special tax to Miller County Highway and Bridge District, which the *collector refused to receive unless I paid the assessment,* and *through injunction he was compelled to receive it* (R., 127, 131).

Eason *vs.* Prairie Pipe Line Co., 149 Ark., 669.

Right of Way.

The right of way contains the following provision:

> "We the undersigned hereby grant (to the Pipe Line Company, its successors and assigns)

the right of way to lay, maintain, operate *and remove* pipe lines, for the transportation of oil or gas, together with the right of ingress and egress on, over and through the following described lands situated in Miller County, Arkansas, to wit:". (Then follows the description.)

"The said undersigned owners, their heirs or assigns, to fully use and enjoy said premises, except as the same may be necessary for the purposes herein granted to the said Pipe Line Company, its successors or assigns."

Then follows a provision for the payment of damages which may arise from laying, maintaining, operating or removing said pipe line. It is further understood and agreed that the said Pipe Line Company, its successors or assigns, may at any time lay an additional line or lines of pipe alongside of the first line, as herein provided, upon the payment of a like consideration for each additional line when laid, subject to the same rights and conditions (R., 95-96).

E. L. Stern.

I am superintendent of the Texas Pipe Line Company in Louisiana, and have charge of all the company's lines in said State. I can see no advantage to pipe lines from improved roads; we never take roads into consideration at all, but run on what we call an air line from starting point to destination, and for that reason good roads do not come very much in contact with pipe lines. In crossing a dirt road you dig right through it, and when you come to a good road we have to bore through with an auger, and then we

case the line under the good road outside of the pipe line with pipe a size larger than the line we are constructing, and the casing is an extra expense, and the excavation across the road is always more expensive, because good roads are ditched out deeper on both sides of the road, and we have to go under this excavation and ditches and, if there is a break in the pipe line under the hard-surfaced road, there would be more expense in the repair of it. After constructing the line the maintenance is usually kept up by a line walker, who travels over the pipe line and upon any good road (R., 117-121). The good road helps a farmer in hauling his trucks, but it would not help the pipe line, because it is in the ground and we seldom have occasion to go see it (R., 120).

Ad Valorem for General Taxation. Lands Assessed at One-tenth of Value.

L. C. Adams, witness for and vice-president of the district, testified that he owned 5,000 or 6,000 acres of rich bottom land in the district. The lands were increased in value by levee drainage ditches and roads (R., 192). The cleared land is worth $100 per acre, of which he had 2,500, and that in the woods is worth $40 per acre, inside the levee. "As a matter of fact the lands inside of Miller Levee District No. 2, which lies inside of the road district, is rich land all along the river front. There are other farms of rich land in that vicinity" (R., 193).

W. J. Paup, witness for the district, testified that the cleared land in that part of Miller County High-

way and Bridge District that is within Miller Levee District No. 2 was assessed for taxation at $10 per acre, and the woods land at $4.50 per acre (R., 180). The average assessment of hill lands was at $5 and $6 per acre (R., 181). The whole assessment for road purposes was $6,687,178, of which the total assessment of benefits in Texarkana and the town of Mandeville (unincorporated) was $2,561,100, and outside of Texarkana and Mandeville, $3,664,445 (R., 181).

The total area in the Miller County Highway and Bridge District is 136,322 acres, which embraces the rich lands of Miller Levee District No. 2, 90,000 acres, about which Adams and Paup both testified (R., 181).

Annual Assessments Upon Benefits.

Mr. Paup further said: The levy on the benefits for the year 1926 was 6⅔ mills; for 1917, the same; 1918, 7 mills; 1919, 7 mills; the years 1920, 1921, 1922, and 1923, 10 mills, and for 1924, 8.5 mills (R., 181).

Testimony that Pipe Line Company Used Roads in Laying Down New Pipe Lines.

Witnesses for the district, E. H. Peyton, L. C. Adams, H. G. Sanderson, and C. S. Christian, testified that when the two additional pipe lines were laid in 1923 the improved roads were used in part for hauling the pipe and men.

D. B. Owens, witness for the district, testified that the roads were used during a period of time of about 2½ months in 1923 in taking up and relaying part of

a line near the river (R., 146). And the Pipe Line Company was using wagons and trucks (R., 149). About two miles of old pipe was taken up and new pipe put in its place in 1921 (R., 155). They were unloading and hauling there, I imagine, two or three weeks. We did not have much of a force and some days it would rain and the men would not work, and things like that (R., 155).

C. S. Christian, engineer for the district, testified that in his opinion the Pipe Line Company was benefited by the building of the roads, by reason of hauling men and materials; that the Pipe Line Company was given no special consideration with reference to where the roads ran (R., 170). There were roads of some kind that the people used before the new roads were built (R., 167). The new roads were laid over places where old roads existed before, public roads or good roads or what not (R., 169).

Louis Josephs.

Louis Josephs testified that he was, and had continuously been, secretary of the Board of Commissioners of Miller County Highway and Bridge District since its creation under original Act 153 of 1915, and under Amended Act 15 of 1917. He produced the original assessment book showing that Prairie Pipe Line Company was assessed valuation (without benefits) of poles, pipe, wire, plant, trackage (tankerage), etc., in the district, $59,340, benefits, $59,340, and value with the improvements, $115,680 (R., 46).

It is shown by undisputed testimony that the Pipe Line Company owned 71.5 acres (R., 67), upon which the tanks and pumps were located, near Mandeville, assessed separately, and that there were no poles. This assessment was filed April 29, 1916 (R., 48).

Re-Assessment of 1920 Takes Place of First Assessment, 1916.

There was a reassessment in 1920 (R., 50), and the identical language as to the Prairie Pipe Line Company is as follows:

> "Prairie Pipe Line Company, 12 miles pipe line (and then) Prairie Pipe Line Company deeded (ditto) 12 miles telegraph and telephone line, $5,000 per mile, total $60,000" (R., 50)
>
> "Q. Didn't that take the place of this one (the original assessment of 1916)?
>
> "A. Well, yes, it follows that if a reassessment was made, the first one was out of order" (R., 50).

The reassessment was filed July 24, 1920 (R., 55).

Bonds Issued by the Commissioners.

The first bond issue of $223,000 was contracted December 5, 1916.

Along in 1917 all litigation was over, and I think the act had been separated, that issue was taken up and another issue of $177,000 added to it, so as to make the total $400,000. That was done March 24, 1917.

There was another bond issue of $40,000, August 5, 1919. Then there was a fourth issue later on, as money was needed, $60,000, September 24, 1920. There was a fifth issue of $40,000, making altogether $540,000, and of this there is outstanding $350,000 (R., 47-48).

At the time this case was tried, April 21 and 22, 1925 (R., 34), it was thought that Act Number 83, approved February 14, 1925 (see appendix of this brief), which gave the board additional power and authorized unlimited bond issues and the rebuilding of all roads with concrete, asphalt or other hard surface, being a special act was void on account of a constitutional amendment, which had been voted upon at the general election of 1924, but it turned out that the amendment had failed (see case of McAdams *vs.* Kenley, 169 Ark., 97), and therefore the act is still in full force and effect.

A. B. Little.

A. B. Little was introduced as witness for petitioner (appellee) and testified that he had occupied the position of assistant tax collector of Miller County, Arkansas, during the years from 1915 to 1917, and he introduced the correspondence between the tax collector's office and the Tax Commissioner Van Tuyl of the Pipe Line Company, of Independence, Kansas, showing that he (the deputy), in making up the statement of taxes for said company for the year 1916, had overlooked the item of $395.20, road tax, of which Mr. Van Tuyl had no previous knowledge, and the subse-

quent year he also overlooked the same. Also through this witness there was read in evidence the statement made by the collector to Mr. Van Tuyl that the entire amount of road tax would be paid out in 15 years, at the rate of $395.20 per year (R., 76-78).

There were three payments of taxes, based upon this information by Mr. Van Tuyl. Subsequently, in 1921, Mr. Black, his successor, ascertained there was a general reassessment of benefits, in which the taxes were increased (R., 125-126). Then he brought action in the Chancery Court to enjoin the collector from refusing to receive the general taxes without the special taxes, and was successful in a decision (Eason *vs.* Prairie Pipe Line Company, 149 Ark., 669), requiring the collector to receive such general taxes, notwithstanding that provision in both Act 153, Section 10 (R., 202), and Act 15, Section 10 (R., 217), which subjected the collector to the penalty of $100, if he did not collect the special tax without the general tax, and would penalize the taxpayer to the extent of 25 per cent of his general taxes.

APPENDIX.

Showing Four Legislative Acts Relating to Miller County Highway & Bridge District, Designated by Nos. 163, 15, 16 and 83.

Act 153, entitled, "An Act to Lay Off and Establish part of Miller County into a public highway and bridge district, for the purpose of construction of public highways, from the city of Texarkana, to the various localities in the territory, hereinafter described, and for the construction of public bridge in connection with such highways over and across Red River, between Fulton and Index." Section 1 fixes the boundaries of the District, which includes the North Half of Miller County, and fixes its name as "Miller County Highway & Bridge District," and provides that it shall be a public agency and a body politic, incorporate, *and that it shall have perpetual succession* (R., 195).

Section 2, provides that the district shall have power to construct and maintain 60 miles of free public highways, of such material as it shall deem best, leading from the city of Texarkana, to such points on Red River, between Fulton and Index at which it may deem desirable and suitable to construct a bridge over and across said river, and said district shall have power to construct and maintain a free public bridge in connection with said highways over and across said Red River.

Section 3 provides that the affairs of the district shall be managed and controlled by a commission composed of three landowners, residents of the district.

Sections 4, 5, and 6 confer power for the formation of plans and construction of the proposed improvements.

Section 7 reads as follows:

"SECTION 7. Immediately after ascertaining the cost of the public improvement contemplated by this act, the commission shall appoint three assessors, who shall reside in the district; each of said assessors, shall, before entering upon the discharge of his duty, take an oath to well and truly assess to the best of his ability the value of all benefits to be received by each landowner by reason of the proposed improvement, as affecting each tract of land in said district. They shall ascertain the value of the real property within said district without said improvement, and also the value of all the roads, tramroads, street railroads, electric light and water plants, rights of way, telephone and telegraph lines, pipe lines, and all other franchises *of whatsoever description, in any manner* connected with the realty in said district, *without said improvement, and the value thereof as benefited by said improvement, and shall charge against each lot, tract or parcel of real estate, railroad, tramroad, street railways, electric light and gas plants, water plants, rights of way, telephone and telegraph lines, pipe lines, and all other franchises whatsoever connected with the realty in said district,* an assessment according to the value of the benefit that will accrue to it by reason of the construction of said highways and bridge.

"The Board of Assessors shall within one hundred and twenty (120) days after their organization complete their duties by filing with the commission a list showing the description of the property of the district, the owners'

names as far as same appear from the last county assessment, and such corrections as they may ascertain should be made, *and the valuation* of each lot, tract or parcel of land, railroad, street railway, gas and electric light plant, water plant, tramroads, telephone and telegraph lines, pipe lines and all other franchises of whatsoever description in any way connected with the realty in said district without the improvement, *and the valuation with the improvement, and the benefit* estimated to accrue to each lot, tract or parcel of land, railroad, tramroad, street railway, gas and electric light plant, water plant, telegraph and telephone lines, pipe lines and all other franchises of whatsoever description in any way connected with the realty in said district by reason of the improvement; and shall file the same with the county clerk of Miller County for the inspection of all persons interested. Notice of the filing of said assessments shall be given by publication in one newspaper published in Texarkana, Arkansas, and said notice shall set a date not less than thirty days distant, and the place where any complaint may be made by any landowner, railroad, tramroad, street railway, gas and electric plant, water plant, telegraph or telephone line, pipe line or any franchise whatsoever in any way connected with the realty in said district before the Board of Assessors of any assessment made against his or its property.

"The said Board of Assessors shall correct any inequality, injustices, or errors, which they may find in the assessment, and shall hold meetings for the purpose of hearing the complaints of the owners of any such property in said dis-

trict as to said assessment, and *shall increase or decrease the assessment* so as to adjust the burden of the assessment to the benefit to accrue to the real property. Provided, *that in reassessing the benefits for the making of said improvements, the assessors shall never diminish the total amount of the assessed benefits in case said district shall have incurred debts.* The Board of Assessors may adjourn from day to day until the hearings are completed. Any property owner as aforesaid, aggrieved by the action of said Board of Assessors, may take an appeal to the commission within thirty days from the action of the Board of Assessors upon his complaint; or any other property owner aforesaid may appeal from the action of the Board of Assessors from any assessment which acts unequally upon his property.

"The commission shall hear all appeals and determine the same, and appeals may be taken from the commission to the County Court in the same manner as is now provided by law *that appeals may be taken from the county equalization board to the County Court,* which said appeals shall be taken within thirty (30) days from the action of the commission complained of.

"The assessors shall be paid the sum of three ($3.00) dollars per day for the time actually engaged by them in the discharge of the duties of their office.

"When the assessors have completed their work and all appeals therefrom have been heard by the commission, the commissioners shall then equalize the assessment so as to equalize and adjust all assessments to the benefit to accrue

to each lot or parcel of real estate, railroad, tramroad, street railway, gas and electric light plant, water plant, or right of way, telephone or telegraph line, pipe line, or any other franchise whatsoever, connected with the realty of said district assessed, which said equalization shall be completed within thirty days after the time for appeal from the Board of Assessors has expired."

The words underscored in first paragraph of Section 7 are omitted in said paragraph, as copied at page 199 of the record, but the foregoing copy is correct, as will be shown by reference to Act 3 of the Legislature, 1915, pp. 624-625.

Section 8 provides that as soon as assessments have been equalized, the commission shall charge each lot, tract of real estate, railroad and utilities with an assessment equal to the *benefit* estimated in the said assessment list to accrue to such land, etc.; and shall apportion such assessment in annual installments, so as to realize annually only such sum of money as will be necessary to meet the expenses incurred, and a sinking fund to pay the bonded indebtedness, *and for such improvements and maintenance as the commission shall determine shall be paid from the assessment annually,* "provided that the improvements herein undertaken shall not exceed 15 per cent of the valuation of the real property in said district, subject to improvement district assessment, as ascertained by the State and county assessments of said property for the year next preceding the time when the assessment herein provided for may be made, *provided, however, that this limitation of 15 per cent of valuation shall not prevent an annual assessment, as hereinafter provided, for the maintenance of the improvement after the cost of the construction has been paid.*"

Section 8 further provides that all railroads, pipe lines and other utilities connected with the realty of said territory, shall be assessed according to the *betterments and increase in value*, in like manner as herein prescribed for real estate, *except that said assessments shall be made per mile.*"

Section 9 provides that the assessments shall be declared a lien upon all the assessed property in the district, ahead of all other liens, and shall continue until such assessments with any penalties and costs which may accrue thereon may be paid.

Section 10 provides that the board shall annually before the first of September, determine the amount of taxes which may be required for the succeeding year, and enter upon its records an order levying the same upon the benefits to the property of the District, subject to taxation thereunder.

Said section further provides that "the amount of taxes herein provided for shall be annually extended upon the tax books of the county and collected by the collector of the county along with other taxes," and "if any collector shall fail to collect the road tax, along with the other taxes, he shall be subject to a *penalty of $100* for each instance in which he shall collect from an individual the other taxes and omit the road tax, unless the road tax has been enjoined by a court of competent jurisdiction, to be recovered by a suit brought by the commissioners to the use of the district; and the county clerk shall be subject to a like penalty for each case in which he shall fail to enter the road tax upon the tax books" (R., 202).

Section 11 provides for borrowing money and issuing bonds to make the improvements.

Section 12 provides for the payment of taxes between the first Monday of January and the 10th day of April of each year, and requires the collector to re-

port all delinquencies for nonpayment, and to add a *penalty of 25 per cent*, and said section provides that the board of commissioners shall enforce the collections by chancery proceedings in the Chancery Court of Miller County, and that the court shall give judgment for the amount of taxes and penalty and interest, and the method of procedure is prescribed (R., 203-204).

Sections 13 to 37 provide for the sale and redemption of property, and the conduct of the business of the board.

Act 15.

"An act to amend Act No. 153 of the Acts of the General Assembly of the State of Arkansas, of the year 1916, being an act forming the Miller County Highway and Bridge District." The whole of Act 153 is amended by this Act No. 15, and Section 1 embraces the same territory as in Act 153, and a small quantity of land located in the adjoining counties, which had been cut off by Red River, and said section further provides that said territory "be and the same is hereby created and constituted a highway and bridge district, and said district shall be known as 'Miller County Highway and Bridge District,' and shall be a public agency and a body politic, incorporate under said name and style, and they may sue and besued, plead and be impleaded, and *have perpetual succession* for the purposes hereinafter designated" (R., 212).

Section 2 provides that said district shall have power to construct 75 miles of *free public highways*, of such material as they may deem best, consisting of two main lines, from the city of Texarkana, northerly to the Red River and from said city easterly to said river, with such branches as they may deem advantageous.

Section 3 provides for the appointment of three commissioners, naming the same, to manage the district.

Sections 4 and 5 provide for the organization of the board of commissioners, and authorizes them to form plans and to construct the improvements.

Section 6 is as follows:

"Section 6. *The assessment heretofore made by the assessors for said district is hereby ratified and confirmed as the assessment of the benefits which will accrue* from the making of the improvements herein contemplated, and the assessors heretofore named by the board shall proceed to make a similar assessment upon the lands in Hempstead and Lafayette Counties hereby added to this district.

"If the board changes its plans of improvement, it shall file such changed plans with the county clerk of Miller County, *and if either the board or any individual thinks that, by reason of said changes in the plans, the assessment heretofore made has become inequitable, a new assessment of benefits shall be ordered by the board*, and the board may, not oftener than once a year, order a reassessment of the benefits in the entire district; *but in no event shall the total amount* of the assessed benefits within the district *ever be diminished;* and if any *future assessment* should be for an amount less than the preceding assessment of benefits, such assessment shall be *void*, and the preceding assessment shall continue in force.

"The assessment of the lands in Hempstead and Lafayette Counties hereby added to the district shall be made in the same book as the present assessment and in the same manner.

"Future assessments of benefits shall be made in books to be furnished by the board, which shall show the lands of the district as they appear on the county tax books, such corrections as may be necessary, and shall also show the railroad, street railway, gas and electric light, water tramroad, telephone, telegraph *and pipe lines by the mile*, and also all other franchises of whatever description in any way connected with the realty in the district. Opposite each piece of property shall be placed the name of the owner, if known to the assessors, and the *amount of the betterments*. Such assessment shall be filed with the county clerk of Miller County for the inspection of all persons interested; and upon its filing, the secretary of the board shall give notice by publication in a newspaper published in Texarkana, Arkansas, that the assessment has been filed, and shall set a date not less than thirty days distant and a place where any person interested may appear before the board of assessors and complain of the assessment of his property or of the assessment of any other property in the district.

"At the time fixed in said notice the board of assessors shall meet and shall hear the complaints of property owners, and shall increase or decrease the assessments so as to adjust the burden thereof to the benefits that will accrue. The board of assessors may adjourn from day to day until the hearings are completed. Any property owner aggrieved by the action of the board of assessors may appeal to the commission within thirty days; and the commission shall meet at some convenient time and hear all appeals and determine the same, and *their de-*

cision shall be final. The assessors shall be paid the sum of three dollars ($3) per day for the time they are actually engaged in the discharge of their duties" (R., 215).

Section 7 attempted to ratify and confirm all the acts of the commissioners of said Miller County Highway and Bridge District, and all their agents in so far as they have acted by the authority of the commissioners, and all acts of the assessors of said district are ratified and confirmed, *particularly* the action of said commissioners in levying taxes upon the assessed benefits in said district, by their resolution adopted on the 5th day of December, 1916, and their action in issuing bonds of said district amounting to $223,000.00, and their action in settling with railroads; and it is further provided in Section 7, "that the improvement authorized by this act shall not cost more than 10 per cent of the value of the real property in said district as authorized by the last State and county assessment made before the particular work is undertaken; but interest shall not be computed as part of such costs." And "If, in the future, the assessed value of the property in the district shall be increased, and the power of the board to expend money for improvements shall increase proportionately, *and the board shall have the authority to levy further taxes in excess of the 10 per cent limit herein prescribed, for the purpose of making necessary repairs upon the highways improved by it*" (R. 216).

It is provided by the Section 8 that the assessors hereby appointed shall continue to be the assessors of the district until discharged by the board, which may appoint their successors from time to time.

Section 9 provides that the assessment shall be a charge and lien against all real estate in the district,

from the date of said resolution, and shall be entitled to preference over all judgments, executions, incumbrances, or other liens whatsoever, and shall continue until such assessment, with any penalties and costs which may accrue thereon, shall be paid.

By Section 10, it is provided that whenever the board shall issue any bonds, it shall levy upon the assessed benefits, a tax, payable through a series of years until the maturity of said bonds, of an amount sufficient to pay said bonds with interest as they mature; and may pledge and mortgage said levy to secure payment of such bonds.

Section 10 further provides for penalty of $100 against the collector, should he receive the general taxes without payment of the special tax, and a like penalty against the County Clerk for each case in which he shall fail to enter the road tax on the tax books. The balance of said act, from Section 11 to 22, inclusive, provides for the collection of the delinquent taxes, and penalty, and for the administration of the affairs of the district.

Act. 16.

An Act to Create Red River Bridge District.

The original act 153 provided for the building of 60 miles of road and a bridge. This was amended by Act 15, to provide for the building of 75 miles of highway without the bridge.

Act 16 creates a separate district, embodying the same territory as in the other acts, for the purpose of building a bridge across Red River. This bridge was built at Index, and a special improvement district tax was authorized to be assessed and was assessed against all property in the district, including the pipe line, to pay for the cost of the bridge (R. 223-235).

Act No. 83.

An Act in Aid of Miller County Highway and Bridge District.

Section—

1. Commissioners may pave, cost, amount of tax.
2. Amends Section 6, Act 15 of 1917 assessments, notice, appeals.
3. Amends Section 10, Act 15 of 1917, extension of tax, collection.
4. Interest on benefits assessed.
5. All cases advanced in all courts.
6. Sale of lands.
7. Assessment confirmed.
8. Emergency, in force from passage.

Whereas, the Miller County Highway and Bridge District has constructed its roads of gravel; and

Whereas, it has been found that the expense of maintaining gravel roads under the heavy traffic now passing over the road running north from Texarkana along the State Line is so great that it would be to the interest of the district to pave said road with concrete; and

Whereas, with the growth of the community, similar conditions will arise in other portions of the district;

Now, therefore, be it enacted by the General Assembly of the State of Arkansas:

Section 1. The board of commissioners of the Miller County Highway and Bridge District *are hereby authorized to pave with concrete, asphalt or other hard surface deemed by them most advantageous, any road of the district heretofore constructed* which they find will require such hard surface in order to carry economically the traffic thereon. Plans for such hard surface roads shall be made by the board and filed with the county clerk of Miller County and notice thereof

given by publication for one insertion in some newspaper published in the City of Texarkana.

The *cost of the improvement* authorized by this act shall *not exceed fifteen* (15%) *per cent of the value of the real property* as shown by the *last county assessment made before the work is undertaken; but interest shall not be computed as part of the cost.*

The total present assessment of benefits in the aggregate shall never be diminished and the rate of taxation shall never exceed ten (10) *mills per annum on the assessment of benefits;* but in no year shall a tax be levied, which with the sums derived from the gasoline and automobile tax and other sources, will exceed the amount necessary to pay the bonds and interest maturing during the succeeding twelve months and such sums as may be necessary for repairs, *the whole tax never to exceed ten* (10) *mills on the assessment of benefits.*

Section 2. The *last paragraph of Section 6 of Act No.* 15 of the Acts of the General Assembly of the State of Arkansas of the year 1917, entitled, "An Act to amend Act No. 153 of the Acts of the General Assembly of the State of Arkansas of the year 1915, being an act forming the Miller County Highway and Bridge District," *approved January* 29, 1917, be amended to read as follows:

At the time fixed in said notice, the board of assessors shall meet and shall hear the complaints of property owners, and shall increase or decrease the assessments so as to adjust the burden thereof to the benefit that will accrue. The board of assessors may adjourn from day to day until the hearings are completed. Any property owner aggrieved by the action of the board of assessors may appeal to the chancery court of Miller County within thirty (30) days after the adjournment of the board of assessors, and not thereafter, for a revision of his assessment. The assessors shall be paid

the sum of three ($3) dollars per day for the time they are actually engaged in the discharge of their duties.

Section 3. The last paragraph of Section 10 of said act shall be amended to read as follows:

The amount of taxes herein provided for shall be annually extended upon the tax books of the county and collected by the collector of the county along with other taxes; and for his services in making such collection the collector shall receive a commission of one (1%) per cent; and the collections shall be paid over by the collector to the treasurer of the district at the same time he pays over the county funds. No property owner shall be allowed to pay his State and county taxes unless he pays his road improvement taxes; and if any collector shall fail to collect road tax along with the other taxes, he shall be subject to a penalty of $100 for each instance in which he shall collect from an individual the other taxes and omit the road improvement tax, unless the road improvement tax has been enjoined by a court of competent jurisdiction, to be recovered in a suit brought by the commissioners to the use of the district and the county clerk shall be subject to a like penalty for each case in which he shall fail to extend the road improvement tax upon the tax books.

Section 4. *The assessment of the benefits of said Miller County Highway and Bridge District now on file and any other assessment of benefits, which it may make, shall bear interest at the rate of six* (6%) *per cent per annum. Collections shall first be applied to the interest; but interest need not be calculated until necessary to avoid collecting more than the total assessed benefits with interest.*

Section 5. All suits to restrain the commissioners of said district from proceeding with any work, or to restrain the collection of any taxes of said district, and

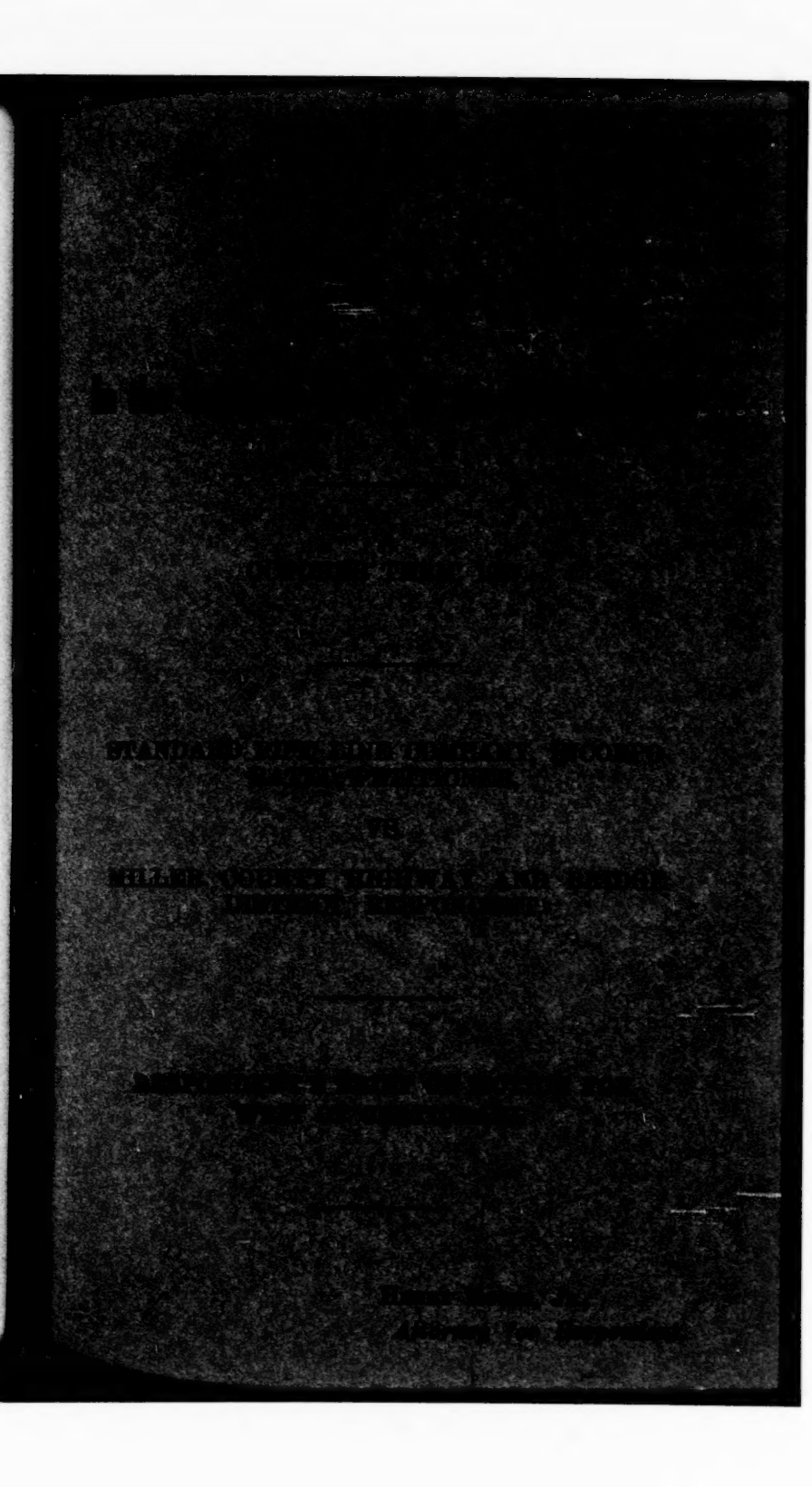
all suits brought by the district to collect its taxes, and all suits questioning the authority of any of the officers of said district or their right to their positions, shall be deemed matters of public interest and shall be advanced in all courts, and shall be heard at the earliest possible moment; and all appeals therein must be taken and perfected within thirty (30) days.

Section 6. When lands have been sold in proceedings to enforce the collection of the taxes of said district, the owner thereof shall have two years from the date when they are stricken off by the commissioner making the sale in which to redeem therefrom.

Section 7. It is ascertained and hereby declared that the assessment of benefits of said district is just, equitable and proportionate, and the same is hereby ratified and confirmed and shall stand as the assessment of benefits of said district until a new assessment is made in the manner provided by the said Act No. 15 of 1917.

Section 8. This act being necessary for the immediate preservation of the public peace, health and safety an emergency is hereby declared, and the act shall take effect and be in force from and after its passage.

Approved: February 14, 1925.



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No. 577.

In the Supreme Court of the United States

OCTOBER TERM, 1927.

STANDARD PIPE LINE COMPANY, INCORPORATED, PETITIONER,

VS.

MILLER COUNTY HIGHWAY AND BRIDGE DISTRICT, RESPONDENT.

STATEMENT OF THE CASE.

Miller County Highway & Bridge District was organized by special act of the Arkansas Legislature during the year 1915. It was found that funds were not available to build both the roads and the bridge, so a special act authorizing the bridge built and another act confirming the assessment of benefits that had been made for the roads and authorizing the roads built separately, was passed by the General Assembly of the State of Arkansas during the year 1917.

A third act again confirming the assessment of benefits and authorizing certain roads paved with

hard surface materials was passed by the General Assembly of the State of Arkansas, during the year 1925, being Act No. 83. Since that time, because the burden of road taxes had become so great as to virtually confiscate the lands in many counties of the state, Act No. 11 (known as the Martineau Act, because the present Governor, J. E. Martineau, was elected on a platform to remove the road taxes from the land), was passed by the General Assembly during the year 1927, which removes all road taxes, the outstanding bonds being paid and new roads being built from a tax of five (5) cents a gallon on gasoline.

The petitioner, the Standard Pipe Line Company, Inc., brought this suit in the U. S. District Court at Texarkana to enjoin the collection of further road taxes on the right of way and pipe lines of the petitioner, said petitioner had paid its road taxes for three (3) years before bringing this action.

The highway district filed its motion to dismiss petitioner's bill in equity as petitioner had not availed itself of the administrative remedies afforded by the statute to have its taxes reduced. The district court overruled such motion to dismiss and upon a trial on the merits, found in favor of the petitioner and enjoined collection of the taxes at issue.

Upon appeal, the Circuit Court of Appeals for the Eighth Circuit reversed the decision of the U. S. District Court and petitioner has now applied for a writ of certiorari to the circuit court of appeals.

TESTIMONY.

As supplementary to the testimony presented in petitioner's brief, we present the following to save this court the necessity of searching the record.

T. B. Morris, bookkeeper for the Texarkanian, the paper in which the notice of assessment of benefits was published, identified the assessment of benefits as published and stated that the paper had a general circulation during the year 1920 and that Mr. Hilford, general manager of the petitioner's pipe line at Texarkana, was a subscriber to said paper (Tr. pp. 35 to 38).

Louis Josephs, the secretary of the highway district identified the original assessment book, showing the assessment of the right of way of the Pipe Line Company, which pipe line and telegraph line is assessed at $59,340.00, same being the total assessment for road purposes (Tr. pp. 42 to 50).

George T. Conway, one of the assessors, stated that the zoning system was used in the country that in the City of Texarkana, the assessment for county and state purposes was used and that all town lots were assessed on an *ad valorem* basis, using as the benefit the county and state assessment. That in assessing right of way of pipe line of petitioner, the county and state assessment basis was used as in the City of Texarkana, the same basis also being used for

the telegraph and telephone company lines and all other public utilities.

The reassessment of benefits was made because the roads were not built as originally laid out, thus causing some lands to be adjacent to the road that formerly were in the third zone, and other lands to go into the third zone that formerly were in the first zone. No changes were made in the assessment in the City of Texarkana or in the public utilities.

Mr. Conway testified that Mr. Hilford, superintendent of the pipe line property in Miller County, had an office adjoining his and that he was informed fully about both the first and second assessment (Tr. pp. 53 to 65).

A. B. Little, testified that while assisting in collecting the taxes in Miller County, he notified the tax commissioner of the Pipe Line Company about the road taxes during the year 1917 (Tr. pp. 65 to 72).

W. D. Fulton, chief engineer of the Pipe Line Company admitted that his company could haul cheaper and quicker over a hard surface road than over the dirt roads and that they used about sixty men in building the pipe line and regular trucks of the company took men to and from their work. He stated however, that in his opinion this was no benefit to the Pipe Line Company, but was a benefit only to the men who rode in the trucks. He admitted that these roads would benefit the *owners* of the Pipe Line Company, but not the Pipe Line Company (Tr. pp. 73 to 84).

R. A. McGrew, vice-president of the petitioner, testified that in addition to the two lines of eight inch pipe on the right of way, that during the year 1922, two additional lines of eight inch pipe were laid, that the cost of hauling pipe might be in excess of one thousand dollars per mile, but that the general average is about four hundred dollars per mile; he stated that the company has a fleet of trucks which are used in this territory and gave as his opinion that a good road does not benefit the property adjacent to same, but only benefits the owners of the property (Tr. pp. 87 to 100).

W. J. Springer testified that he is joint chief of the Fire Department of Texarkana, Arkansas and Texas; that at the request of the Pipe Line Company, he made the run from Texarkana to their pumping station at Mandeville in about fifteen minutes and that the property was saved from burning.

He further stated that the fire equipment weighs about seven and one half tons and that without the good road, he could not have made the run as the equipment would be torn up or some of the firemen killed in going over ordinary county roads (Tr. pp. 100 to 104).

F. L. Stein the superintendent of the Texas Pipe Line Company, a witness at the request of petitioner, testified that he knows nothing about the area or roads under consideration. He further stated that he did not think good roads would help a telephone line, pipe line, iron foundry or any other kind of business. He finally admitted that it might reduce the cost

of hauling somewhat, if the pipe could be hauled over a good road (Tr. pp. 104 to 107).

C. H. Black, tax commissioner of the Pipe Line Company, stated that he made the returns for the company to the Arkansas Taxes Commission for the years 1920 to 1922 inclusive, that during that time, Mr. Hilford was superintendent in charge of the pipe line property; that Mr. Hilford is now dead, but while acting as superintendent, he had an office in Texarkana and there was a direct private wire telephone connection from Hilford's office to the home office in Kansas.

H. G. Sanderson testified: I am the collector and tollkeeper for the bridge across Red River near Index and have held such position since September, 1923. You must go over the good roads in Miller County to reach said bridge. During the years 1923 and 1924 the pipe line company used trucks and hauled a great number of men over the roads and across the bridge; also pipe. During the last seventeen days of October, 1923, they paid by check $173.45 in tolls for trucks and teams that crossed the bridge. Autos are charged 50c, light trucks 75c, and heavy trucks $1.00. They also had a number of two and four mule wagon teams. The trucks carried pipe, tools and other materials. Also they had trucks that hauled men out to work. One truck hauled white men and made two or three trips every day. The trucks could not get to the bridge without going over the good roads. In addition to the money paid me set forth above, by check, for the pipe line company, additional amounts were paid me in cash.

This work on the pipe line went on from the first of September, 1923, until the latter part of 1924. The entire fall of 1923 and all of 1924. The work was digging up and distributing pipe, digging ditches, putting in new pipe, joining it up and painting it.

I have had considerable experience in farming and helped build good roads in Little River County. It is an advantage to have a good road over which men and materials may be transported. It is a whole lot cheaper to haul over a good road, than over the ordinary dirt road. The loads the Pipe Line Company hauled could not have been brought at all over common country roads. They hauled pipe out on trucks and unloaded by the side of the road and then reloaded on wagons and hauled it out on the line. The trucks hauled from Mandeville and Paups Spur a distance of about 7½ miles. The amount paid me for tolls by the Pipe Line Company in October would probably be over an average of the amount paid for the other months of 1923 and 1924. In my opinion by means of the good roads the cost of hauling the pipe was cut in half. The Pipe Line Company hauled pipe across the bridge both ways. They brought the old pipe from Little River County into Miller County, and hauled new pipe from the railroad at Mandeville and Paups Spur across the bridge into Little River County.

From my place on the bridge I could see a mile and one-half down the highway and I know the pipe were hauled out on trucks and unloaded by the good road, then it was re-loaded on wagons and hauled along the pipe line right of way. They would haul

four or five joints of pipe on a wagon and twelve to fifteen joints on a truck. The road crossing the bridge from Ogden into Little River County is a dirt road. In winter it gets nearly impassable. It was cheaper to haul from Paups Spur over the good road and cross the bridge than to haul the pipe a shorter distance from Ogden over the dirt road. Regardless of the reason, I know the Pipe Line Company hauled the new pipe from Mandeville over the good road and over the bridge into Little River County and picked up the old pipe and hauled back into Miller County going toward Mandeville with it (Transcript pages 119 to 128).

D. B. Owens testified: I worked for the pipe line company about three months during the summer of 1921, acting as time keeper for them. They were putting down about two miles of pipe in a loop from Ogden across Red River and were working eighty to ninety men. Mr. Hillford was superintendent of the job. These men went to their work principally in auto trucks, coming from Texarkana ten or fifteen miles over the hard surface road. Ice and supplies were hauled out in trucks over said road and pipe and river clamps put around the pipe were hauled out from Paups Spur over the road. Enough pipe was hauled to put down two miles. Hauling was done mostly by trucks. It was unloaded along the good road and distributed with wagons and teams. It was too rough for trucks to go in the woods and the ground was too soft. On the hard surface road, the trucks carry ten or fifteen joints, on the dirt road wagons were used, after the pipe was unloaded

from the trucks and they carried three or four joints. Work was done on both sides of the river. If there had been no good roads to haul over, I think the pipe would have been unloaded at a switch on the Kansas City Southern Railroad. J. B. Hillford was in complete charge of everything for the Pipe Line Company (Transcript pages 128, to 136).

C. S. Christian who during 1927 was appointed State Highway Engineer of Arkansas testified: I have been a resident of Texarkana for fourteen years, am the engineer for the Miller Levee District, and was engineer in charge of building the good roads in Miller County. He identified the map introduced in evidence and the location of the pipe lines and good roads shown thereon. The way the roads and pipe line run, you can go on a good road to within less than two miles of any part of the pipe line. Before the roads were built there were no public roads in the bottoms between Paups Spur and Index, and one could scarcely go through there on horseback. The public roads were opened up when the hard surface roads were built. Prior to that time on the public roads the bridges were in such condition that autoes or trucks could not have been used, even in dry seasons the dirt roads would have been cut up by heavy hauling until they soon became impassable. It is a decided advantage to haul over a hard surface road, the load limit can be increased and much higher speed maintained thus reducing the cost of hauling. Before these roads were built, at certain seasons of the year, it was impossible to haul between Paups Spur and Index.

At any time before the roads were built, 2500 pounds would have been a good load for a farm wagon. In laying the pipe lines trenches were cut through the good roads and pipe laid and then the trenches were filled up (Transcript pages 137 to 150).

L. F. French testified: I have been for more than twenty years in the contracting business doing levee, road and hauling. During the years 1923 and 1924 I hired my teams by the day to the Standard Pipe Line Company. I hauled for them between 45 and 60 days in Miller County, crossing the river and hauling for them in Little River and Sevier Counties. I used mules and wagons and hauled some pipe from Mandeville and from Paup Spur over the good road to the pipe line right of way and hauled some from the storage piles on the good road along the pipe line right of way.

It was about three and one half or four miles from Paup Spur to the distributing point on the good road where the pipe was unloaded. This being the point where the pipe line crosses the good road. On the gravel roads the teams can haul all the wagons will hold. It is simply a matter of the capacity of your wagon. After leaving the hard surface road, I think I pulled six to eight joints. I do not think the company distributed any pipe on its right of way with trucks, but hauled them all on the good roads and placed them in piles where the good road crosses the pipe line right of way. It is a great advantage in hauling heavy materials such as pipe, to have a good road over which you may haul. I did not haul any

pipe from the Kansas City Southern Railroad in Miller County.

There is no good road after you cross the bridge between the bridge and Ogden. In hauling from Paup Spur there was no way to get out to the pipe line except over the good road. In hauling with trucks the Pipe Line Company did not take the trucks off the gravel road. Along the pipe line right of way at times it was such bad hauling that all wagons would have to be unloaded and the pipe snaked or skidded along the right of way one at a time. One single bad place would keep you from hauling a load across same (Transcript pages 151 to 157).

W. J. Paulk testified: I have been employed as an accountant for the Miller County Highway and Bridge District for several years. In the bottoms cleared land is assessed at $10.00 per acre, and the average wild land $4.50 per acre for general taxation. The assessment of benefits for road purposes in the entire road district is $6,687,178.00. The assessment of benefits for road purposes in the City of Texarkana is $2,561,000.00. Outside the City of Texarkana such assessment for road purposes is $3,664,445.00. The total acreage of land in the district is 136,322 acres. The average assessment of benefits for road purposes per acre against the land outside the city is $26.88 per acre.

On the assessment of benefits there was levied for road taxes the following percentage:

1916	6-2/3 mills
1917	6-2/3 mills
1918	7 mills
1919	7 mills
1920	10 mills
1921	10 mills
1922	10 mills
1923	10 mills
1924	8.5 mills

The benefits assessed against any tract of land are multiplied by the number of mills for the year levied, and the result is the amount of taxes that must be paid for road purposes by that land for said year. The assessment for the purpose of general taxation is not considered and has no bearing on the collection of taxes for road purposes, the road taxes being levied on a benefit basis (Transcript, pages 158 to 159).

E. H. Peyton testified: I operate a farm at Paup Spur and have been staying on the farm practically all of the time since 1917. The good roads had not been completed when I moved there. In the hills there were passable roads, but if one went into the Red River bottoms, after a rain they were impassable. An auto could not be used at all. It took four mules to pull a two mule load. There was no road of any kind between Paup Spur and the bridge at Index. One had to just wander around through the woods to get there.

During the year 1921, the Pipe Line Company unloaded a large quantity of pipe at Paup Spur, I

understand about twenty-one cars. Trucks hauled the greater part of this out on the gravel road and placed it in dumps and from there it was distributed on the pipe line right of way by teams. My teams hauled during that time for the Pipe Line Company. After you left the good road there was no road through the woods. It was very wet and bad at times and two or three pipe were all we could haul at a load after leaving the good road. On the good road, it was not a question of what your teams could haul as they could pull all the wagons would hold up. I have seen trucks go out from Paup Spur over the good road with fifteen to twenty pipe. In hauling with wagons from the dumps where the pipe was put along the good road, it would be so bad on the pipe line right of way that we would unload our wagons and hitch a pair of mules to just one pipe and snake it along the right of way.

My farm will not raise any bigger crops because of the good roads, the advantage from a good road is making a place accessible. The pipe line company has been benefited as you can go close to their line at almost every point on a good road and they can haul their materials and men over the good roads to work on and repair the line. They hauled men in trucks from Texarkana and many of the men came to work in their own cars. During the year 1921, at one time they worked about one hundred fifty men. Work was commenced again on the pipe line in the year 1923 and finished during the year 1924, and a quantity of pipe was unloaded at Paup Spur. The pipe were taken out over the good road from Paup

Spur in trucks. They hauled from fifteen to twenty pipe at a load. The trucks could not leave the good road. They did not work as many men as in 1921, working this time perhaps seventy-five to one hundred men. I would see the trucks coming by my place to work with 25 to 30 men on a truck. The pumping station is right along the good road and the men at work there came out in cars and trucks from Texarkana.

While this work was going on, old pipe that was taken up in Miller County and from across the river was brought in to Paup Spur over the good road by trucks. It was hauled by teams to the good road, then the trucks were loaded and brought it in. There were two distributing points or dumps on the good road, one on Dr. Collins' farm and the other near the bridge at Red River (Transcript, pp. 160 to 165).

L. C. Adams testified: I live at Texarkana and I am vice-president of the road district. I own a farm in Red River bottoms. There was no road from Paup Spur to Index so one could go into Little River County before the good roads were built. In dry weather one could haul in the bottoms, but when it was wet, I had to use four and sometimes six mules to haul a two mule load. We shipped our cotton from Homan because we could not haul it to Texarkana. Now I can bring in 16 to 20 bales over the good roads with a four mule team. In the bottoms the land is black buckshot, so it is impassable in wet weather.

Within the last two weeks, since the fire at the pumping station at Mandeville, a large number of workmen have been coming out over the good roads in trucks and

cars. I formerly ran a livery business and have had considerable experience in hauling. I think the pipe line company has been greatly benefited by the good roads. They can haul four times as much over the good roads as over the dirt roads. The only way anything can be benefited by a good road is by the traffic over same. It does not make the farm raise any more. The benefit of the good roads is from accessibility.

Some of the cleared lands are now worth $100.00 per acre, and some of the woodland, $40.00 per acre. The increase in value has come from a variety of circumstances. The first advance was because of the levee being built, then the land advanced because a drainage ditch was being dug, then from the highway being built and being close to Texarkana; also the advance in the price of cotton made land go up (Transcript, pages 165 to 169).

The two acts creating the district and act creating Red River Bridge District were introduced in evidence. Under Section 7 of the 1915 Acts, parties aggrieved by the assessment made on their land, must appeal in thirty days from the board of assessors to the commissioners and if still aggrieved then appeal in thirty days to the county court of Miller County (Transcript, pages 174 to 206).

Under the Act of 1917, Section 6, the assessment of benefits heretofore made was ratified and confirmed, and from any assessment made thereafter, a party aggrieved must appeal to the commissioners within thirty days (Transcript pages 187 to 189).

Under Act 83 of the Acts of General Assembly of Arkansas, which became a law February 14, 1925, Sec-

tion 7 thereof, the legislature ascertained and declared that the assessment of benefits in this road district is just and equitable and ratified and confirmed such assessment of benefits which shall stand until a new assessment shall be made:

> "Section 7. It is ascertained and hereby declared that the assessment of benefits of said district is just, equitable and proportionate, and the same is hereby ratified and confirmed and shall stand as the assessment of benefits of said district until a new assessment is made in the manner provided by the said Act No. 15 of 1917.
>
> Act 83, page 249 of Acts of Arkansas for the year 1925."

On being recalled, *R. A. McGrew*, vice-president of the pipe line company testified: That his estimate of the cost of reproduction of the pipe line is $11,500.00 per mile for one string of 8-inch pipe; that it would cost four times that or $46,000.00 per mile to replace the four lines of pipe now laid along the right of way owned by the pipe line company (Transcript, pages 206-207).

Louis Josephs, secretary of the district on being recalled, testified: That the total assessment of benefits against the pipe line company is $60,000.00. That, as shown by W. J. Paulk's testimony, 1%, 10 mills, has only been levied for long years, it being less for the other years; that if the total of 1% had been or should be levied for the entire period of the bond issue for twenty years, the total taxes to be paid by the pipe line company would be $12,000.00, but the present levy, which will continue, is only 8-2/3 mills a year (Transcript, page 208).

The map filed as an exhibit has attached a memorandum furnished by the pipe line company showing the assessed benefits for the property in the district, the number of miles of right of way owned by the pipe line company and the number of miles of pipe occupying said right of way.

BRIEF.

Respondents motion to dismiss could have been sustained without a trial of this cause on its merits.

Under the Original Act of 1915, Section 7, any property owner aggrieved by the assessment of benefits could complain to the board of assessors to obtain a correction of any assessment, an appeal was granted to be taken within thirty days by the property owner from the action of the assessors to the commissioners of the road district and an appeal then allowed from the decision of the commissioners to the county court, such appeal to be taken within thirty days.

Under the Amendatory Act of 1917, Section 6. In case of reassessment of benefits, the board of assessors should meet and hear the complaints of property owners and increase or decrease their assessment in accordance with the benefits to be received. Any property owner aggrieved by the action of the assessors could appeal to the commissioners, such appeal to be taken within thirty days.

Although under the last act no specific authority to appeal from the assessment of road commissioners was granted, yet such authority is granted under the Constitution and laws of the State of Arkansas. In a matter involving the adjustment of the proportion of an indebtedness to be assumed by two counties, the commission appointed by the Legislature made the decision and though no right of appeal was specifically

granted, the Arkansas court held such right of appeal to exist under the Constitution. *Phillips County* v. *Lee County,* 34 Ark., page 243. Such has been the consistent holding of the Arkansas courts, even though the appeal is from a special proceeding authorized by the Legislature. See *Missouri Pacific Railroad Co.* v. *Conway County Bridge Dist.*, 134 Ark., page 297, and cases there cited.

The pipe line company, under the above acts, had a complete remedy meeting all requirements of the due process clause of the Fourteenth Amendment of the U. S. Constitution, and having failed to pursue the remedy provided, cannot now, after a delay of more than seven years bring this action in equity to obtain a review and avoidance of the assessment of benefits.

In an Arkansas case, after citing from the *State* v. *Railroad Tax Cases,* 92 U. S. p. 609, to the effect that where a party aggrieved has a judicial tribunal before which he may appear for the correction of such grievance, he must pursue such remedy, the court held:

> "Due process of law," said Judge Field in *Railroad Tax Cases,* 13 Fed. Rep. 752, "is deemed to be pursued, when after the assessment is made by the assessing officers upon such information as they may obtain, the owner is allowed a reasonable opportunity at a time and place to be designated to be heard respecting the correctness of the assessment and to show any errors in the valuation committed by the officers. Notice to him will be deemed sufficient if the time and place of hearing be designated by statute." This is the established rule. Cooley on Tax, (2nd Ed.) 364-5, and cases cited there and *supra.*

> And where an adequate remedy in the nature of an appeal is provided, as is done in our statute, the better opinion is that a mere error of judgment on the part of the board or a mistake in their conclusion, though arrived at without evidence where evidence is required, is not available in a collateral issue. The tax payer must pursue the remedy provided for his relief or abide by the finding of the board.

citing various cases from Arkansas and other states to support its holding; also stating:

> "Great mischief would follow in permitting the taxpayer to select arbitrarily his own time and tribunal to test the correctness of an assessment."
> *Board of Equalization Cases*, 49 Ark. p. 533.

In a later case the court reaffirmed the law as laid down above, holding:

> "The jurisdiction to fix this valuation is by legislation ordinarily placed with some officer or board; and boards or courts of revision are sometimes established. But the entire proceedings are statutory, and the statutory remedies provided to a party aggrieved by an over-valuation made within the jurisdiction of the particular officer or board must be pursued. As is said in the case of *Stanley* v. *Supervisors of Albany*, 121 U. S. 535: 'A party who feels himself aggrieved by overvaluation of his property for purposes of taxation and does not resort to the tribunal created by the state for correction of errors in assessment cannot maintain an action at law to recover the excess of taxes paid beyond what should have been levied on a just valuation.'"
> *Clay County* v. *Brown Lumber Co.*, 90 Ark. p. 417.

In a late case which has recently been affirmed by the U. S. Supreme Court, the Arkansas Supreme Court held:

> "The third and fourth grounds of attack may be considered together. The court sustained a demurrer to that portion of the complaint which attacked the assessments on the grounds that they were made under a mistake of fact, and that there was a discrimination in favor of, or against, certain property owners. This action of the court must be affirmed, for there must come a time when such questions are foreclosed. It was upon the faith of these assessments that the district incurred obligations and issued negotiable bonds with which to pay them, and these bonds are owned by the investing public through the United States. The act expressly names the time when these questions are foreclosed, and that time is ten days after the completion of the hearing on the assessments by the commissioners, except as against property owners who, within that time, have applied to the chancery court for relief.
>
> "We have in many cases upheld this limitation upon the time within which property owners may complain. The recent case of *Pierce* v. *Drainage District No.* 17, 155 Ark. 89, collects a number of them. This question was very thoroughly considered by us in the recent case of *Road Improvement Dists. Nos.* 1, 2 *and* 3 v. *Crary*, 151 Ark. 484, in which a very similar attack was made on an assessment of benefits. There the assessment had been made according to the zone system, which was said to be arbitrary and unreasonable, but we answered that and other objections to the assessment as follows: 'We have often decided that the method provided in the statute for attacking the validity of the assessment of benefits is exclusive, and that it must be pursued within the time prescribed by the statute. In other words, it

has been settled by repeated decisions of this court that a collateral attack cannot be made upon the assessment of benefits unless void on the face of the proceedings. *Reitzammer* v. *Desha Road Imp. Dist.*, 139 Ark. 168; *Summers* v. *Conway & Damascus Road Imp. Dist.*, 139 Ark. 277; *Nettles* v. *Hazelwood Road Imp. Dist.*, 144 Ark. 632; *Sikes & Douglas*, 147 Ark. 469."

House v. *Road Improvement Dist. No.* 2, 158 Ark. p. 344.

The decisions of the U. S. Supreme Court on this question are thoroughly in accord with the citations heretofore given from the Arkansas Courts.

An assessment for park purposes was made by the supervisors sitting as a board of equalization of the City of Denver, due notice having been given to the land owners to appear and except to any assessment. The Colorado courts had held that the statute in question gave the interested parties full authority to be heard, and having failed to appear, they could not thereafter raise the question as to whether their property had been benefited in the amounts found by the board of equalization. The U. S. Supreme Court held itself bound by the decision of the Colorado court as to the meaning of the said statute and held that the due process clause of the Constitution had been complied with.

"The full hearing before the board of equalization excludes the courts from entertaining any objections which are cognizable by this board. The statute itself therefore, is clear of all constitutional faults."

Plaintiffs in error did not avail themselves of the privilege of a hearing, as provided by this sec-

> tion, but after the assessing ordinance had been passed, began this proceeding in the district court to test the constitutionality of the law. As we have said, the question as to what should be a proper construction of the charter provision was not for our decision; that matter was within the sole authority of the state court, and was disposed of, as the Supreme Court of Colorado held, by the former cases reported in 33 Colo. and by our decision based upon that construction in *Londoner* v. *Denver*, 210 U. S. 373, 52 L. Ed. 1103, 28 Sup. Ct. Rep. 708. As the plaintiffs in error had an opportunity to be heard before the board duly constituted by par. 300, they cannot be heard to complain now. It follows that the judgment of the Supreme Court of Colorado must be affirmed.
>
> *Fawnwood* v. *City & County of Denver*, 252 U. S. p. 12.

The above case was referred to and sustained in a later case going up from the State of Colorado where it was held that the property owners who failed to appear before a tax commission to object to a tentative *ad valorem* basis for assessment for public improvements cannot complain before the courts of the adoption of such basis on the ground of its unconstitutionality. *Millheim* v. *Moffatt Tunnel Improvement District*, 262 U. S. p. 712.

In a later case involving the identical question here raised, the U. S. Supreme Court held itself bound by the construction of the state court of a state statute in reference to the remedies of tax payers for relief from an excessive assessment, and further held that the failure to seek relief from an alleged unequal tax from the proper board cannot be excused because

no appeal to a judicial tribunal was provided in case of the rejection by said board of the party's complaint; and the Supreme Court further held that although it was alleged that the time for hearing complaints was inadequate, yet the court will not assume that the proper relief would not have been granted; and finally holding that a tax payer must exhaust his available legal remedies before the administrative board before resorting to courts to enjoin the enforcement of an unequal tax.

In said case as stated, in the opinion, the fact was found that the banks as assessed were compelled to pay upon valuation grossly in excess of that put upon other property in the county, but since they had not pursued the remedy provided under the statute, no relief could be afforded.

> "Plaintiff not having availed itself of the administrative remedies afforded by the statutes, as construed by the state court, it results that the question whether the tax is vulnerable to the challenge in respect of its validity upon any or all of the grounds set forth, is one which we are not called upon to consider. The judgment of the district court is accordingly affirmed."
>
> *First National Bank* v. *Board of County Commissioners*, 264 U. S. p. 456.

In the last case on this subject, which as yet has not appeared in book form, suit was brought to enjoin as unconstitutional the collection by the State of New York of the annual franchise tax paid upon net income. The New York statute provided that a dissatisfied tax payer might within one year apply to the tax

commission for a revision and reassessment according to the law and facts. The plaintiff did not apply to the commission, but within the year brought this suit; referring to the case next above cited, the U. S. Supreme Court held:

> "A taxpayer who does not exhaust the remedy provided before an administrative board to secure the correct assessment of a tax, cannot thereafter be heard by a judicial tribunal to assert its invalidity (citing cases) * * *
>
> The company, however, made no application to the commission for a revision of the tax; it submitted no evidence to the commission as to any of the matters on which it now relies, either as to the inclusion of profits derived from the munitions business or otherwise; and it did not request the commission to resettle the tax on the ground of any error or invalidity, in matter either of fact or law.
>
> Under these circumstances we think that the company, having failed to avail itself of the administrative remedy provided by the statute for the correction of the tax was not entitled to maintain a bill in equity for the purpose of enjoining its collection."
>
> *Gorham Manufacturing Co.* v. *State Tax Commission of New York*, 266 U. S. p. 265.

The various reasons set forth in the petition for writ of certiorari seem to fall under the following heads:

Petitioner claims that the right of way and pipe lines are personal property.

The decisions of the Arkansas Supreme Court on this point are binding on this court and such decisions have uniformly held that a right of way and the prop-

erty thereon is real estate in Arkansas. *Ft. Smith Light & Traction Co.* v. *McDonough,* 119 Ark. p. 258; *Mo. Pacific Railway Co.* v. *Conway Bridge Dist.* 142 Ark. p. 11.

A telegraph line erected on the right of way of a railroad company, under a twenty-five year contract, was held to be a permanent easement and real estate and the act of the Legislature making such telegraph line subject to road taxes was upheld. *Western Union Telegraph Co.* v. *Road Dist. No.* 1, 144 Ark. page 479.

In a case carried by the present petitioner to the Arkansas Supreme Court in an endeavor to avoid the payment of local assessments, it was decided that the very right of way and pipe line at issue in this cause is real estate and subject to local assessment as real property. See *Standard Pipe Line Co. Inc.* v. *Index-Sulphur Drainage District,* decided by the Supreme Court of Arkansas, March 28th, 1927, now in print in the advance sheets.

Petitioner claims that its right of way and pipe lines are not sufficiently described so they may be identified for tax purposes.

Petitioner paid the assessments for road purposes for three years and then brought an action to be allowed to pay county and state taxes on its right of way and pipe line without paying such road taxes.

Petitioner had certain correspondence with the tax collector's office about its delinquent road taxes before paying same and after corresponding, did pay such taxes, so it appears that the description was ample to

identify the property and petitioner knew what property was and is subject to read taxes.

To prevent the opportunity of any property escaping taxation because of a mis-description or clerical misprision under the original act of 1915, Section 131 Tr. p. 180, it was provided that this law shall be liberally construed to give the assessment and tax lists the effect of a first mortgage and lien against the property. It was further held: "Provided that no informality or irregularity in holding of any meeting or the assessment of the land, or the names of the owners, or the number of acres, shall be a valid defense to an action for taxes" (Tr. p. 180).

"Also under Section 8, (Tr. 176), it prescribed that railroads, rights of way, pipe lines, telegraph and telephone lines and all other franchises connected with the realty shall be assessed according to the betterments and increase in value in like manner as herein prescribed for real estate, except said assessment shall be made per mile and no error in the name and residence of the owner or *the description thereof* shall invalidate said assessment if sufficient description of the property sought to be taxed is given to ascertain where it is situated."

In order that any mis-description or clerical misprision on the assessment roll might be corrected, Section 15 of the original act of 1915 (Tr. 181), and Section 14 of the amendatory act of 1917 (Tr. 194), are the same and as follows:

> "In the event the description of any lot, tract or parcel of property upon the list of the assess-

ment hereinbefore provided to be made, shall for any reason be uncertain, indefinite or insufficient, then in any suit brought to enforce the payment of any assessment, the court shall have the power to correct such description and enforce the collection of any assessment due thereon, having due regard for the rights of any parties who may have intervened."

Petitioner claims that being a nonresident notice of publication of the assessment of benefits does not apply to petitioner.

The testimony shows conclusively that notice of the filing of the assessment roll was given by publication as required by law granting the owners at least thirty days within which to appear and except to their assessment. Such notice complied fully with the due process clause of the U. S. Constitution and it was not necessary that actual notice be given to each separate land owner in the district. According to the evidence, the road was built immediately adjoining the pumping station and general headquarters of the pipe line company, and they of necessity used the road, saw same and knew of its construction. The testimony also shows that one Mr. Hillford, the superintendent in charge of the company's affairs in Miller County, Arkansas, who was in daily communication with the home office through a private telegraph wire, knew about the assessment for road purposes and discussed same with George Conway, one of the assessors who had an office adjoining that of Hillford. The assessment being *in rem* against the property itself notice thereof by publication fully complied with the constitutional requirements.

Four weeks' notice was held to be adequate time to afford due process of law where land was sold for levee taxes, and referring to lands owned by non-residents, the U. S. Supreme Court held:

> "It should be kept in mind that the laws of a state come under the prohibition of the 14th Amendment only when they infringe fundamental rights. A law must be framed and judged of in consideration of the practical affairs of man. The law cannot give personal notice of its provisions or proceedings to everyone. It charges everyone with knowledge of its provisions; of its proceedings it must, at times, adopt some form of indirect notice, and indirect notice is usually efficient notice when the proceedings affect real estate. Of what concerns or may concern their real estate men usually keep informed, and on that probability the law may frame its proceedings; indeed, must frame them, and assume the care of property to be universal, if it would give efficiency to many of its exercises."
>
> *Ballard* v. *Hunter*, 204 U. S. p. 262.

The time limit set by the statute, within which objections to an assessment for road purposes, could be made, was upheld by the Arkansas Supreme Court in *House* v. *Road Improvement District No.* 2, 158 Ark., page 344. On appeal the U. S. Supreme Court held that the statute allowed twenty-eight days from the first publication of the notice within which the petitioner could have objected to the assessment, holding as follows:

> "Accepting the statute as construed by state courts the suggested objection to its validity appears to us wholly wanting in merit."
>
> *House* v. *Improvement District*, 266 U. S. p. 177.

As in the Bullard case above cited, House was a non-resident of the state (see also *Larisny Land Co.* v. *Hoffman*, 268 U. S. p. 279).

Petitioner claims that the assessment of benefits is so arbitrary and discriminatory as to be invalid and further claims that the ratification of the assessment of benefits is invalid.

The ratification and confirmation of the assessment of benefits by Acts of 1917 and 1925 was a legislative assessment, and is binding upon the property owner unless absolutely arbitrary, unreasonable and absurd.

> "It is next insisted that the Legislature had no power to validate and confirm the assessments which had theretofore been made by the commissioners. Unless the assessment was arbitrary, the Legislature had the power to confirm and validate it. The Legislature had the power in the first instance to have levied the assessment subject only to the right of the land owner to have an arbitrary abuse of that power reviewed by the courts, and it can therefore adopt as correct the assessment made by the commissioners as a reassessment by the Legislature. *Coffman* v. *St. Francis Drainage District*, 83 Ark. 54 and *Davies* v. *Chicot County Drainage Dist.*, 112 Ark. 357."
>
> *Gibson* v. *Spikes*, 143 Ark. p. 274.

> "An affirmance of the judgment in this case might be rested entirely on the confirmation of the assessments by the statute cited above. There is no reason shown why the statute is not applicable, for we have decided that, even during the pendency of litigation, a statute may be enacted ratifying and confirming assessments. *Sudberry* v. *Graves*, 83 Ark. 344; *Tims* v. *Mack*, 147 Ark. 112; *Gibson* v. *Spikes*, 143 Ark. 270; *Burr* v. *Drainage District*,

145 Ark. 55; *Payne* v. *Road District*, 149 Ark. 491."

Kansas City Southern Railroad Co. v. *Road District No. 3*, 156 Ark. p. 118.

In which last case the U. S. Supreme Court in affirming the decision of the state court held as follows:

"The special confirmatory act was recognized by the supreme court of the state as a legislative determination of the lands which will be benefited, and of the proportions in which they will share in the benefits. It therefore must be treated here as an admissible legislative assessment of benefits so far as the state constitution is concerned."

Kansas City S. R. Co. v. *Road Improvement Dist. No. 3*, decided by the U. S. Supreme Court, December 15th, 1924.

Among other cases cited as supporting their holding that the finding of the Legislature as to benefits is conclusive the U. S. Courts quote approvingly from *Spencer* v. *Merchant*, 125 U. S. 345.

This leading case on this subject has settled for all time that a legislative finding of benefits is conclusive on the courts, state and Federal and does not violate the 14th Amendment to the Constitution, unless such legislative determination is palpably arbitrary and therefore a plain abuse of power.

Of the total benefits assessed for road purposes, $6,687,178.00; $60,000.00 in benefits was assessed against the pipe line company, about 9/10 of 1% of the total assessment of benefits.

On said amount during the twenty year period through which the bonds run if the maximum of ten mills per year had been levied, $600.00 per year, $12,-

000.00 total would be collected in road taxes. However, as shown by the testimony, the maximum has been collected for only four years and the average over the twenty years will probably be less than $500.00 per year to be paid by the pipe line company. We therefore feel that the court erred in finding as a fact that such levy of an assessment of benefits of $5,000.00 per mile is palpably arbitrary.

The method in Arkansas of determining benefits received by property in improvement districts.

We quote below from a few of the Arkansas decisions showing that the courts have never attempted to substitute their opinion and judgment for that of the Legislature or of the assessors appointed to distribute benefits. The Arkansas courts following the rule laid down by various decisions of the U. S. Supreme Court have consistently refused to hold said assessments invalid unless of such a nature as to be so palpably arbitrary as to be shocking to one's ideas of right and justice.

> "The Legislature may commit the ascertainment of the sum to be raised and of the benefited district to commissioners, but is not bound to do so; and may settle both questions for itself, and when it does so, its action is necessarily conclusive and beyond review. * * * No hearing would open the discretion of the Legislature, or be of any avail to review or change it. * * * The judicial department cannot prescribe to the legislative department limitations upon the exercise of its acknowledged powers."
>
> *St. Louis & S. W. Ry. Co.* v. *Grayson*, 72 Ark. 127.

The St. Louis Southwestern Railway Company claimed that its railroad track running through Red River Levee District No. 1 had not been benefited by the building of the levee, and proved by its witnesses that the track was above overflow. The court found from the testimony of witnesses who professed to know, that the building of the levee was calculated to result in, and did result in benefit to the track. The court further found:

> "It is not necessary that it should receive absolute protection from overflow, or that it should have been entirely without protection and subject to inundation before the levee was built. Whether it was benefited to an extent equal to that of other property in the district, we do not consider it necessary to determine. That was a matter largely for legislative determination in fixing the boundaries of the district and providing for the method of assessment of taxes. That was a matter for legislative inquiry and determination, and that the courts must respect such determination, it is settled in so far as it can be done, by a decision of this court in the case of *Railway Company* v. *Grayson*, 72 Ark. 119, and that decision is in accordance with the authorities generally."

After finding that the assessment of the property shall be according to the value as appraised for state and county taxation, the court found that such method of estimating the benefits is not arbitrary or unreasonable, and that the Legislature might assume that benefits would accrue in proportion to the assessed value of the property (*St. Louis S. W. Ry. Co.* v. *Board of Directors*, 81 Ark. 566).

In a case attacking the validity of assessments in an improvement district, after citing the cases hereto-

fore quoted, this court quoted approvingly from "Cooley on Taxation."

> "It has been repeatedly decided that the legislative act of assessing districts for special taxation on the basis of benefits cannot be attacked on the ground of error in judgment regarding the special benefits, and defeated by satisfying a court that no special and peculiar benefits are received."
>
> *Board of Improvement District* v. *Offenhauser*, 84 Ark. 268.

> "But such fraud or demonstrable mistake can occur only when the assessments are levied on lands entirely regardless of the benefits and by reason of a manifest prejudice against the owner, or in a total and reckless disregard of his rights. If the property is benefited to any extent by the improvement, then it can be included in the district, and the mere fact that the benefit assessed against it was exorbitant or excessive, would not invalidate the assessments thereof.
>
> Nor will it be sufficient to show by a preponderance of the evidence only that the property was not benefited by the improvement. If it appears from any substantial testimony that the property receives any benefit from the improvement, then the assessment thereof made by the board cannot be invalidated by the court.
>
> In the case at bar, while the chancellor found that the property of the defendants was not benefited by the improvement, and his finding is sustained by a preponderance of the evidence, nevertheless there was substantial testimony adduced upon the part of the plaintiff showing that the property received actual benefits from improved sanitation and it could be connected with the sewer system so as to successfully drain the sewage from this property and thereby receive benefits. Under such circumstances, the assessment made by them cannot be invalidated or set aside in this proceeding."
>
> *Board of Improvement* v. *Pollard*, 95 Ark. 552.

The City of Clarendon assessed benefits against the railroad track of the St. Louis Southwestern Railway Company for an improvement district for laying water mains throughout the city. The railway company resisted, claiming that the assessment against their track was arbitrary and unreasonable, which contention was upheld by the chancellor. In reversing the chancellor and upholding the assessment, this court held:

> "When the assessment of the benefits arising from and the proportionate cost of a local improvement has been made upon the property specifically benefited thereby, by the proper officials in the manner prescribed by law, it devolves upon the party attacking same to show that the amount of these assessments is excessive or unequal. It has been held that the amount of the benefits which such officials have found and determined to accrue to each lot and parcel of property in a district by reason of the improvement, will be presumed to be correct and just and the courts will not disturb same until the contrary has been shown by the evidence. Such evidence must consist not *merely of opinions that the assessments are excessive*, but of facts which will overturn the *prima facie* fairness and equality of the assessment established by the returns of the assessors."
>
> *Improvement District No. . . .* v. *St. Louis, S. W. Ry. Co.*, 99 Ark. 521.

The Legislature created Levee District No. 2 in Jackson County, Arkansas, and included within the district part of the railroad track and right of way of the St. Louis, Iron Mountain & Southern Ry. Co. The railway company refused to pay taxes, claiming not only that it received no benefit, but setting forth the fact that it was actually damaged by the building of

the levee, and introduced the testimony of its engineers as experts to show such damage. This court quoted with approval the excerpt from "Cooley on Taxation" that we have heretofore set forth at length, and in referring to the contention of plaintiff that it would not be benefited but damaged by the construction of the proposed levee this court held:

> "After the Legislature has determined that a certain area which it has organized into an improvement district will be benefited by the improvement, it is not a question for the courts to determine, upon a preponderance of the evidence, as to whether or not the legislative judgment has been properly exercised. It is only an arbitrary and manifest abuse of power of the Legislature in creating improvement districts that will be reviewed by the courts."
>
> *St. Louis Iron Mountain and Sou. Ry. Co.* v. *Board of Directors of Levee District*, 103 Ark. 134.

The St. Louis & San Francisco R. R. Company refused to pay assessments for the Ft. Smith & Van Buren Bridge District, claiming that the bridge was not a benefit, but an actual detriment to its property, in that traffic would be diverted from the railroad and bridge of the railway company. Although it was shown that the earnings in freight traffic had decreased since the bridge was put into operation, yet the court held this might be accounted for because of poor crops; that future benefits are, to a certain extent speculative, and that the estimated growth of population, because of the building of the bridge, might reasonably be expected to increase the traffic of the railroad, even with the competition, as it is impossible to find an exact

standard for benefits to accrue in the future, and since there was some testimony showing that benefits had been received, the assessment was upheld, the court holding:

> "The assessment of future benefits is largely a matter of estimate, and, to some extent, speculative. As was stated by Justice Holmes in the case of *Louisville & Nashville, Ry. Co.* v. *Barber Asphalt Co.*, 197 U. S. 430, 'the amount of benefit which an improvement will confer upon particular land, and indeed, whether it is a benefit at all, is a matter of forecast and estimate, and on the question of benefits, the present use is simply a prognostication and plea of prophecy.'"
>
> "We must depend largely upon the opinions of men of sound judgment and reasonable information on the subject, to determine what the future benefits will probably be. If it were necessary to find an exact standard, a measure of benefits in advance would be impossible. That view of the matter would necessarily lead to the conclusion that benefits must be enjoyed before there can be an assessment to pay for the improvement, which would be a contradiction in itself.
>
> The question of the legal sufficiency of the evidence is all that we need to pass upon, and we are of the opinion that there is competent testimony of a substantial nature sufficient to base the finding upon as to the amount of benefits fixed."
>
> *St. Louis & S. F. Ry. Co.* v. *Bridge Dist.*, 113 Ark. 496.

In an improvement district case, going up from Texarkana, after citing numerous cases heretofore quoted, the court held:

> "We have decided in numerous cases that a legislative ascertainment that benefits from a local improvement accrue in proportion to the value

of the property benefited will be respected unless it be demonstrated to a certainty that a mistake has been made."

Board of Improvement v. *S. W. Gas & Electric Co.*, 121 Ark. page 110.

In a case involving assessments for highway purposes, where the legislative act creating the district had set forth the lands that would be benefited, it was asserted that said act is void as containing a legislative finding that certain lands will be benefited by the proposed road, whereas this is a judicial and not a legislative question. The court answered this contention as follows:

"It is always a question of fact, and in a large measure, a matter of opinion, as to what lands will be benefited by a particular improvement. Reasonable minds may, and do differ on this question, and that difference continues to exist when the question of the amount of benefits is reached. Some one must be authorized to decide these questions, for it is inconceivable that there should ever be, or could ever be, a unanimity of opinion upon a subject affording so wide a scope for difference of opinion. The Legislature has control of this subject, and it may appoint such agencies to make these findings as it sees proper to create, or it may make the findings on its own account, and when these findings have been made and have been properly declared in the recitals contained in legislative enactments the courts are bound thereby except for arbitrary or obvious and demonstrable mistakes. A number of cases have thus announced the law and what we have just said disposes of the last recited objection of the *Amici curiae*, that the question of benefits is a judicial, and not a legislative question. Indeed, it is conceded that this court

has frequently so decided, and we decline to overturn this line of cases."

Cummock v. *Alexander*, 139 Ark. 157.

In upholding an assessment of benefits for bridge purposes against a railroad, where the testimony that no benefits would be received was that only of the railroad employes, the Arkansas Supreme Court upheld said assessment using the following language:

> "No attempt was made to prove fraudulent, or capricious or arbitrary action on the part of any officials in making the assessment, the only evidence upon the subject being the opinions of four employes of the company that the improvement of the road would not benefit the railroad property, and if inequality has resulted from the application of the state law in a customary manner to a situation frequently arising in our country, it is an incidental inequality resulting from a valid classification of railroad property for taxation purposes which does not fall within the scope of the Fourteenth Amendment, which was not intended to compel the states to adopt an iron rule of equal taxation."
>
> It follows that the decree will be affirmed.
>
> *Mo. Pac. Rd. Co.* v. *Conway County Br. Dist.*, 142 Ark. p. 14.

In the case of *House* v. *Road Improvement District No.* .. in which the Arkansas Supreme Court decision has been affirmed by the United States Supreme Court, the legal points involved are almost identical with those in the present case.

The road district was formed by special act of the Legislature, which designated the territory that would be benefited by the improvement, and the commissioners appointed assessed the benefits against the

lands in the district. Mrs. House, a non-resident living in Washington, D. C., brought suit claiming that the assessments against her lands were void as being discriminatory as said lands do not receive any benefit from the roads. She also claimed just as is claimed here, that she had no actual notice of the act creating the district, of the building of the roads, or of the assessment against her land, and that the published notice giving parties aggrieved the opportunity to appear before the commissioners and object to the assessment did not give such notice as is required by due process of law.

Both of said contentions were decided in favor of the district and the court stated:

> "This language is too broad for its meaning to be mistaken. The landowner was given an opportunity, if he desired it, to appear and complain before the commissioners about his assessments, or, if he preferred, he might wait until the commissioners had passed upon the assessments and then appeal to the chancery court, and in either case he was entitled to an original *de novo* hearing. It was not necessary that he formally make himself a party to the proceedings. He was made a party by the act itself, and, unless he appeared before the commissioners and was heard by them, he waived the right to that hearing; and if, at the conclusion of the hearing by the commissioners, a hearing by the chancery court was not invoked, the assessment became final and binding."
>
> Citing *Coffman* v. *Road Improvement Dist. No. 6, Lawrence County*, 134 Ark. 411.
>
> *House* v. *Road Improvement Dist. No. 2*, 158 Ark. p. 339.

"Here the Legislature created the district and defined its boundaries. Appellant's lands were placed in the district by the action of the General

Assembly itself, which was a legislative determination that those lands would be benefited by the proposed improvement of the highways within the district; and, after doing this, the act provided that the commissioners should determine the assessment of benefits and damages against the respective tracts of land in the district, and should determine, as an administrative matter, the per cent of these betterments to be levied and collected each year; and we think the notice which the act required is sufficient to constitute due process of law."

House v. *Road Improvement Dist. No.* 2, 158 Ark. p. 343.

The Eighth United States Circuit Court of Appeals has heretofore in a case against a levee district, held that the decision of the Arkansas Legislature is not subject to change by the courts and has quoted approvingly from the Arkansas cases heretofore cited:

"There is no allegation in the bill that in determining this location, the directors acted in an arbitrary and unreasonable manner. There is no allegation that they did not employ competent engineers. If the Legislature had in the act itself located the line in the same place where the directors did locate it, and if it had in the act itself fixed the same height for the levee which the directors afterwards did (both of which things the Legislature had the undoubted right to do), it could not for a moment be contended that an allegation such as is found in the bill would require the court to enjoin the prosecution of the work thus ordered by the Legislature. Such an allegation would amount to nothing more than the opposition of the opinion of the railway company to the opinion of the Legislature."

In *Moore* v. *Board of Directors*, 98 Ark. 113, at page 117, 135 S. W. 819, at page 821, the court said:

"It will be seen from this that the court held that only an arbitrary and manifest abuse of power by the Legislature would be reviewed, and not merely mistakes of judgment. To hold otherwise would be to take away from the lawmakers the powers committed to them and to substitute the judgment of the courts, requiring the latter to review every matter alleged to have been erroneously determined by the Legislature. It is only an arbitrary determination of the lawmakers, made without just and reasonable basis, that the courts should review. We said in *Louisiana & Ark. Ry. Co.* v. *State*, 85 Ark. 12, 106 S. W. 960. 'The legislative determination should be and is conclusive, unless it is arbitrary and without any foundation in justice and reason.' Nor can the courts review merely on general allegations that the assessments are 'arbitrary, excessive, and confiscatory.' Facts must be pleaded which show that the decision of the law makers was not merely erroneous, but that it was manifestly outside of the range of the facts, so as to amount to an arbitrary abuse of power; for nothing short of that will authorize a review by the courts."

In *Salmon* v. *Board of Directors*, 100 Ark. 366, at page 369, 140 S. W. 585, at page 586, the court said:

"Again, it is alleged in the answer, and it is now insisted, that the benefits to the land in question to be derived from the improvement will not be commensurate with the amount of assessments levied, and that the annual assessment should not have exceeded 4 per cent of the valuation of the lands, which amount appellant tendered in court. The legislative branch of the government is, as we have said in several cases, the sole judge in the matter of creating improvement districts of this character, in establishing the boundaries thereof, and in determining, or in providing means for determining, the amount of assessments based on

benefits, and the courts will not interfere unless an arbitrary and manifest abuse of the power is shown. Mere mistakes of the lawmakers, or of those empowered by the lawmakers to make assessments, in fixing the amount or rate of assessment, will not be reviewed and corrected by the courts. *Moore* v. *Board of Directors Long Prairie Levee District*, 98 Ark. 113, 135, S. W. 819; *Board of Improvement* v. *Pollard*, 98 Ark. 543 S. W. 957."

"The decree of the court below is affirmed."

St. Louis Southwestern Ry. v. *Co.* v. *Board of Directors of Miller Levee District No.* 2, 207 Federal Reporter, page 342.

The decisions of the Arkansas Supreme Court holding that the finding of the legislature is decisive as to the property benefited, is in accord with the leading text writers on this subject and with the decisions of the United States Supreme Court.

"The whole subject of taxation belongs to the Legislature. So much is unquestioned. The authority may be exercised directly, or in case of local taxes, it may be left to local boards or bodies. If the Legislature has fixed the district and levied the tax, for the reason that in the opinion of the legislative body such district is plenteously benefited, its action must, in general, be deemed conclusive."

Cooley on Taxation.

"The rule thus laid down is a general one, applicable to all improvements of the class with which it deals, and the benefits thus fixed are the same for all property similarly situated with regard to the improvement. An attempt to determine benefits separately for each tract of land would probably, on account of the varying conditions of the evidence and the varying attitude of mind of the judge or jury which is to determine such questions, lead to as many different results as there

were different tracts of land involved in separate proceedings. The adoption of a legislative rule determining the amount and apportionment of benefits brings order out of what might in the absence of some fixed rule, come very near being chaos."

Page & Jones, on Taxation by Assessment.

"In exercising its power, the legislature may either act directly, determining the area benefited and the rate of apportionment absolutely; or it may delegate to local authorities the power to decide as to the necessity of the improvement, and this delegation may cover all or any of these points. The Federal Supreme Court holds that the legislature, acting directly, may determine the district benefited by a public improvement and lay down an absolute rule as to the apportionment of the expense among the parcels of land included. When this course is adopted, the act of the legislature must be deemed conclusive alike of the question of the necessity of the work and of the benefits as against the abutting property, and to open such questions to review by the courts upon the petition of any and every property holder would create endless confusion."

McGehee on Due Process of Law, 248.

We quote below from the U. S. Supreme Court decisions to the effect that the legislature may determine the area and property benefited, leaving to the commissioners the apportionment of the taxes and when it does so, its action is conclusive and beyond review.

"The legislature may commit the ascertainment of the sum to be raised and of the benefited district to commissioners, but is not bound to do so, and may settle both questions for itself; and when it does so, its action is necessarily conclusive and beyond review." * * *

"The lands might have been benefited by the improvement, and so the legislative determination

that they were, and to what amount or proportion of the cost, even if it may have been mistakenly unjust, is not open to our review. The question of special benefit and the property to which it extends is of necessity a question of fact; and when the legislature determines it in a case within its general power, its decision must of course be final." * * * "When the determination of the lands to be benefited is entrusted to commissioners, the owners may be entitled to notice and hearing upon the question whether their lands are benefited and how much. But the legislature has the power to determine, by the statute imposing the tax, what lands, which might be benefited by the improvement are in fact benefited; and if it does so, its determination is conclusive upon the owners and the courts, and the owners have no right to be heard upon the question whether their lands are benefited or not, but only upon the validity of the assessment, and its apportionment among the different parcels of the class which the legislature has conclusively determined to be benefited.

In determining what lands are benefited by the improvement, the legislature may avail itself of such information as it deems sufficient, either through investigations by its committees, or by adopting as its own the estimates or conclusions of others, whether those estimates or conclusions previously had or had not any legal sanction."

Spencer v. *Merchant*, 125 U. S. page 345.

"It has been held in this court that the legislature has power to fix such a district for itself without any hearing as to benefits, for the purpose of assessing upon the lands within the district the cost of a local, public improvement. The legislature, when it fixes the district itself, is supposed to have made proper inquiry, and to have finally and conclusively determined the fact of benefits to the land included in the district, and the citizen has no constitutional right to any other or further hearing upon that question. The right which he

thereafter has is to a hearing upon the question of what is termed the apportionment of the tax *i. e.*, the amount of tax which he is to pay."

Fallbrook Irrigation District v. *Bradley*, 164 U. S. page 155.

We cite below various cases with which this court is so familiar that we refrain from making excerpts.

Kelley v. *Pittsburg*, 104 U. S. page 78; *French* v. *Barber Asphalt & Paving Co.*, 181 U. S. page 324; *Webster* v. *Fargo*, 181 U. S. page 394; *Cass Farming Co.* v. *Detroit*, 181 U. S. page 396; *Davidson* v. *New Orleans*, 96 U. S. page 97; *Houck* v. *Little River Drainage Dist.*, 239 U. S. page 260; *Wagoner* v. *Lesser*, 239 U. S. page 218; *Bauman* v. *Ross*, 167 U. S. page 548.

Counsel is quite familiar with the cases relied upon by the attorneys for the pipe line company, *Norwood* v. *Baker*, 172 U. S. page 269; *Myles Salt Co.* v. *Drainage Dist.*, 239 U. S. p. 478; *Gast Realty Co.* v. *Snyder Granite Co.*, 240 U. S. page 57.

Also with the recent cases that have gone up to the Supreme Court from Arkansas, *Kansas City Southern Railway Co.* v. *Road Improvement District No. 6*, 256, U. S. page 659; and *Thomas* v. *Kansas City Southern Railway Co.*, 261 U. S. page 483.

The decision in each one of the five cases last above cited was made because the court found under the peculiar facts in each of said cases that the assessment was so grossly discriminatory as to be unjust and absurd.

In the instant case the facts as developed from the testimony show a substantial benefit to the pipe line company, certainly fully as much benefit as will be

received by many thousands of lots in the City of Texarkana against which, just as in the case of the pipe line, an assessment of benefits has been made equal to the assessment against each of said lots for county and state taxes.

Recent decisions of the U. S. Supreme Court quote at length from the cases we have heretofore cited, and re-affirm the holding therein set forth. Said recent cases also refer to the five cases above cited on which the attorneys or the pipe line company must depend and distinguish said five cases because of the finding that no benefit could be received under the peculiar state of fact set forth in said cases.

The witnesses for the pipe line company in their testimony, admitted that a benefit was received by the parties working on the pipe line, by those hauling for the pipe line company with trucks and wagons and that a benefit was received by the owners of the pipe line in the access given by the roads to their officials, laborers and employees, who had to work on, repair and rebuild the pipe line, but in the testimony, they asserted such benefit was received by the owners, employees, teamsters and laborers of the pipe line company, and none by the pipe line itself.

Said testimony admits that some one received a benefit from the building of the roads, but attempts to distinguish between an inanimate object or tract of land and the person having the beneficial ownership of same, which appears to be sophistry. One might as well say a tract of farm land should not pay taxes for the road because the owner and not the land uses

and passes over the road. One might as well say that the city lot should not pay an assessment for water works or sewerage, since the owner of the house on the lot, and the party living in the house are the ones to get the benefit from the water and sewerage and not the house and lot.

The testimony of the plaintiff's witnesses showed that originally one line of pipe was laid on the right of way, and afterwards during 1920 to 1924, three additional lines of pipe were laid, and the attorney for the pipe line company asked the witnesses if such pipe before being laid was not personal property.

The pipe line and right of way were assessed the benefits to be received from the road, and although pipe not attached to the soil do not become real estate until laid on the right of way, yet after being laid, so as to become part of the right of way, they change from personal to real property just as the lumber and brick change when built into a house, from personal to real property.

The testimony of plaintiff's witnesses showed the average cost "stringing" or hauling and delivering pipe on the right of way to be $400.00 per mile although they stated that such cost at times would run to as much as $1000.00 per mile.

They admitted (what is a patent fact without such admission), that it is cheaper to haul over a hard surface than over a dirt road.

The testimony showed without contradiction that three times as many pipe could be hauled at a load over hard surface roads as over dirt roads, and the testi-

mony of witnesses was introduced that one-half of the hauling cost could be saved by using the good roads.

Three lines of pipe along the entire right of way, twelve and three-quarter (12.75) miles, have been laid in the last four years, and if one-half the cost of hauling has been saved, $200.00 per mile, on more than 37 miles, the road in four years has saved the pipe line company $7500.00, about two-thirds of the total benefits that will be collected, and we may presume that during the remaining eleven years an equal amount of saving will be effected from the hauling of pipe for construction and repair purposes. It would therefore seem that a very definite and direct benefit from the building of the road has been had by the pipe line company.

In the case of *Branson* v. *Bush*, the circuit court of appeals enjoined the collection of the tax. The Legislature had ascertained and declared that the road and all other real property in the district would be benefited more than the cost of the road and had assessed against the railroad and each tract of real estate a benefit equal to the assessment for state and county purposes. Four employees of the railroad company gave as their opinion that the railroad could receive no benefit from the improvement and the circuit court of appeals held that the evidence showed that railroad derived no benefit from the road. The supreme court set aside this holding as the evidence was not sufficient to show the action of the general assembly to be arbitrary, capricious or confiscatory in declaring the railroad benefited, citing from *Spencer* v. *Merchant*, and holding as follows:

> "It is decided that if the proposed improvement is one which the state had authority to make and pay for by assessments on property benefited, the Legislature, in the exercise of the taxing power, has authority to determine, by the statute imposing the tax, what lands, which might be benefited by the improvement, are in fact benefited by it; and if it does so its determination is conclusive upon the owners and the courts, and the owners have no right to be heard on the question whether their lands have been benefited or not."
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> *Bush* v. *Branson*, 251 U. S., page 189.

In the case of *Valley Farms Co.* v. *Westchester County*, a large area of land was assessed to build a trunk sewer using the county and state assessment as the measure of benefits; because of the location of said land in a valley, the property could not connect with the sewer without tunnelling through certain hills and four miles of connecting line would have to be built at probably a cost of $300,000.00 to use the trunk sewer.

The contention was made that no notice of hearing upon the apportionment of the assessments had been given, and the tax, without any opportunity to use the sewer save at an expenditure of $300,000.00 was palpably arbitrary and an abuse of legislative power.

After citing from many of the cases hereinbefore set forth the supreme court held: That the fact of the additional expense required to be made to use the sewer did not show that the lands were arbitrarily included and that they were subject to said tax:

> "The doctrine has been definitely settled that, in the absence of flagrant abuse or purely arbitrary action, a state may establish drainage districts and tax lands therein for local improvements,

and that none of such lands may escape liability solely because they will not receive direct benefits."

Myles Salt Co. v. *Iberia & St. M. Drainage Dist.; Gast Realty & Invest. Co.* v. *Schneider Granite Co.*, and *Kansas City Southern R. Co.* v. *Road Improv. Dist. supra*, present facts deemed sufficient to show action "palpably arbitrary, and a plain abuse" of power. Here the allegations make out no such situation. All lands within the district ultimately may be connected with some portion of the sewer, and we cannot say they derive no benefits therefrom, or that any were included arbitrarily, or for improper purposes.

It was unnecessary for the Legislature to give notice and grant hearings to owners before fixing the boundaries of the district so as to include their lands, and prescribe the method of taxation. And it is unimportant that the sewer had been completed before the boundaries of the present district were established.

Phillip Wagner v. *Leser, supra.*

Valley Farms Co. v. *Westchester County*, 261, U. S. p. 164.

In the Colorado tunnel case heretofore cited, the decision of the Legislature was held binding, even though direct and immediate benefits could not be shown to the land. The same benefit being received by lands within the taxed district as by other lands of the state not taxed. The supreme court upheld the classification of the Colorado Legislature as follows:

> "Classification as to special benefits. It is contended that no special benefits of a direct and immediate character will accrue from the tunnel to the lands lying within the district, as distinguished from the other lands in the state, and that hence the classification made by the act in

providing for the assessments solely upon the lands within the district, is entirely unreasonable and arbitrary. It is well settled, however, that if a proposed improvement is one which the state has authority to make and pay for by assessments on property benefited, the Legislature in the exercise of the taxing power has authority to determine, by the statute imposing the tax, what lands may be and are in fact benefited by the improvement; and if it does so, its determination is conclusive upon the owners and the courts and cannot be assailed under the 14th Amendment unless it is wholly unwarranted, and a flagrant abuse, and by reason of its arbitrary character is mere confiscation of the particular property."

Millheim v. *Moffatt Imp. Dist.*, 262 U. S., page 721.

In a recent road case arising in Arkansas, taxes were assessed against a railroad on an *ad valorem* basis to pay the debts of an abandoned road district. Such legislative assessment of benefits against the railroad was upheld by the supreme court and the decision was affirmed on the further ground as follows:

"So far as concerns the Federal Constitution, the validity of the tax may be rested, also, on other grounds. A state may defray the cost of constructing a highway, in whole or in part, by means of a special assessment upon property specially benefited thereby. But it is not obliged to do so. Road building is a public purpose which may be effected by general taxation. The cost may be defrayed out of state funds, or a tax district may be created to meet the authorized outlay."

Missouri P. R. Co. v. *Western Crawford Road Imp Dist.*, decided Nov. 17, 1924, U. S. Advance Opinions.

On the same day the famous House case given so much notoriety by the New York Times was decided, the court holding:

> "This cause grew out of the creation of District No. 5, Conway County, by Act No. 245, and assessment for benefits thereunder. With one exception the questions now raised are the same as those in cause No. 92. As an additional ground for challenging the statute plaintiff in error claims that it is arbitrary and beyond the power of the Legislature because the proposed improvement could not benefit plaintiff's lands, while other lands actually benefited were not included. The record does not show that this objection was placed upon any Federal ground in the courts below; but assuming that the point was properly made, we think it is clearly without merit. *Houck* v. *Little River Dist.*, 239 U. S. 254, 265, 60 L. Ed. 266, 274, 36 Sup. Ct. Rep. 58; *Miller & Lux* v. *Sacramento Drainage Dist.*, 256 U. S. 129, 130, 65 L. Ed. 859, 863, 41 Sup. Ct. Rep. 404; *Valley Farms Co.* v. *Westchester County*, 261 U. S. 155, 163, 164, 67 L. Ed. 585, 590, 43 Sup. Ct. Rep. 261."
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> *Mrs. M. L. House* v. *Road Improvement District No. 2*, 266 U. S. p. 177.

In the Archer County case decided January 4, 1926, the supreme court held "that due process" had not been had as there was no legislative enactment authorizing the creation of the road district. If, as in the instant case, there had been a legislative act determining what property would be benefited by the road, the bond issue would have been upheld. We cite as follows from the court decision:

> "The legislature may make assessments for local improvements ratably on the basis of property valuation (*Valley Farms Co.* v. *Westchester Coun-*

ty, 261 U. S. 155, 67 L. Ed. 585, 43 Sup. Ct. Rep. 261), but where the amount to be raised is determined and the property to be assessed is selected as in this case, the requirement that the burden shall be so spread is not a legislative assessment.

Where a local improvement territory is selected, and the burden is spread by the legislature or by a municipality to which the state has granted full legislative powers over the subject, the owners of property in the district have no constitutional right to be heard on the question of benefits."

Browning v. *Hooper*, 269 U. S. p. 396.

In the Arkansas road case that went from Sevier County to the Supreme Court, questions at law identical with the present case were involved. The zone system was used for rural property and the assessors placed assessments on the town lots and railroads in the proportion that they deemed them benefited by the road. The railroad appealed just as the pipe line company has done here on the ground that they received no benefit whatever, that their assessment was purely arbitrary and in contravention of the due process clause of the 14th Amendment to the Constitution. There, as here the legislature confirmed the assessment of benefits and there, as here, the employees of the railroad company, called as witnesses, asserted vigorously their opinion that the railroad would receive no benefit, without advancing anything substantial in support of said opinion.

The Supreme Court stated that a better case might have been made if the witnesses had devoted themselves to showing that the amount of benefits assessed against the railroad was excessive instead of attempting to

show that no benefit whatever would be received. The decision cited nearly all of the cases to which we have heretofore referred and distinguished between the five cases relied upon by the pipe line company heretofore mentioned. We cite from said case as follows:

> "By a long line of decisions in this court it has been settled that, where the State Constitution, as construed by the state court of last resort, does not provide otherwise, the legislature of a state may require that the cost of a local public improvement such as the construction or reconstruction of a public road, be distributed over the lands particularly benefited, and charged against them according to their value, their area, or the benefits which they will receive; may itself determine what lands will be benefited and in what proportions they will share in the benefits; and may avail itself, for the purposes of that determination, of any information which it deems appropriate and sufficient, including such as may be afforded by reports and estimates made in prior assessment proceedings having the same object. Only where the legislative determination is palpably arbitrary, and therefore a plain abuse of power, can it be said to offend the due process of law clause of the 14th Amendment. * * *
>
> And only where there is manifest and unreasonable discrimination in fixing the benefits which the several parcels will receive can the legislative determination be said to contravene the equal protection clause of that amendment. *Kansas City Southern R. Co.* v. *Road Improv. Dist.*, 256 U. S. 658, 65 L. Ed. 1151, 41 Sup. Ct., Rep. 604; *Thomas* v. *Kansas City Southern R. Co.*, 261 U. S. 481, 67 L. Ed. 758, 43 Sup. Ct. Rep. 440.
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> To justify an assessment of benefits to particular lands it is not essential that the benefits be direct or immediate (*Valley Farms Co.* v. *Westchester County, supra*); but it is essential that they

have a better basis than mere speculation or conjecture (*Kansas City Southern R. Co.* v. *Road Improv. Dist., supra*). In the case of railway property they may consist of gains from increased traffic, reasonably expected to result from the improvement." *Thomas* v. *Kansas City Southern R. Co., supra; Branson* v. *Bush*, 251 U. S. 182, 64 L. Ed. 215, 220, 40 Sup. Ct. Rep. 113.

"The special confirmatory act was recognized by the Supreme Court of the state as a legislative determination of the lands which will be benefited, and of the proportions in which they will share in the benefits. It therefore must be treated here as an admissible legislative assessment of benefits so far as the state constitution is concerned.

The evidence, as before outlined, falls short of showing that the assessment against the railway property was either palpably arbitrary or unreasonably discriminatory. The burden was on the railway companies to overcome the presumption attending the legislative determination, and this they failed to do; for, under the evidence produced, it is an entirely admissible view that the railway property will be substantially benefited by the road improvement, and that the benefits are fairly assessed as between that property and the farm lands and town lots. True, the amount of benefits which will accrue to the railway property is largely a matter of forecast and estimate; but the same thing is true of the farm lands and town lots, and also of benefit assessments in general. See *Louisville & N. R. Co.* v. *Barber Asphalt Paving Co.*, 197 U. S. 430, 433; *Butters* v. *Oakland*, 263 U. S. 162, 165. Forecast and estimate based on a solid premise of fact and experience are not to be confused with mere speculation and conjecture. *Kansas City Southern Ry. Co.* v. *Road Improv. Dist. No.* 3, decided December 15, 1924, 69 Law Ed. p. ...."

We call special attention to the two cases relied on by the pipe line company in the district court, *Board of Directors Miller Levee District No.* 2 v. *Prairie Pipe Line Company*, 292 Fed., page 475; and *Kansas City Southern R. Co.* v. *Road Improvement District No.* 6, 256 U. S., page 660.

In the case of the pipe line company all property was assessed on an *ad valorem* basis, so the question of benefits to the property was not taken into consideration in a classification of the different kinds of property, whereas here, the assessors assessed all property on a benefit basis and placed against each piece and character of property what in their best judgment would be the actual benefit received from the building of the roads. On such benefit basis, the twelve and three-quarter (12.75) miles or right of way with the pipe lines and telegraph lines under and over said right of way, pay to the road district a maximum annual tax of six hundred dollars ($600.00); whereas in the levee case above referred to, six (6) miles of right of way with the pipe line thereunder paid an annual tax of twenty-five hundred sixty-one dollars ($2561.00). Therefore on the same proposition of mileage of right of way, in the levee case the pipe line company was assessed annually ten times the tax assessed in the instant case.

The method of assessment here being on a benefit basis and the annual tax being in the instant case less than one-tenth (1/10) of that in the Levee-Pipe Line case, we most respectfully suggest that the assessment in the instant case is not excessive in proportion to the benefits received.

In the *Kansas City Southern R. Co.* v. *Road Improvement District* case cited above, more than 25% of the assessment for road purposes was levied against the railroad track. The supreme court held such assessment excessive, but held that since the railroad would receive some benefit, an assessment for road purposes in proportion to the benefits received should be made against its track and the cause was remanded that such reasonable assessment of benefits might be made. Here only 9/10ths of one percent of the assessed benefits were laid against the pipe line right of way.

Counsel willingly admits that the capacity of the pipe line has not been increased by the building of the road, just as the fertility and productiveness of the farms along the road have not been increased, but the pipe line has been made accessible and the pipe line company, as shown by the testimony, has gladly availed itself of the use of such roads in laying the additional three lines of pipe and in repairing the pipe line already laid.

It would probably be impossible to show definitely in dollars and cents the exact increase in value received by the pipe line from the building of the good road. It would be equally impossible to show the exact benefit or increase in value, if any, received by rural property from the building of the good roads, and certainly it would be very hard to show what benefit, if any, has been received from the building of the good roads by the thousands of lots both vacant and with buildings on same in the City of Texarkana, a city of probably 15,000 population on the Arkansas side alone, yet

counsel for the pipe line company would hardly contend that the legislative finding of benefits by including Texarkana in the road district could be overcome by such proof as has been introduced in this cause.

McGrew, vice-president of the pipe line company, testified: That the replacement value of each pipe line per mile during the year 1920 was $11,500.00, and at that time there were two pipe lines on the right of way. This makes the value of the twelve and three-quarter (12.75) miles of right of way with the two lines of pipe, approximately $290,000.00 during the year 1920, and after the building of the two additional lines of pipe the value has become approximately $580,000.00; against this sum has been levied an assessment for benefits for road purposes of $60,000.00 of which only between $10,000.00 and $12,000.00 will be collected over a period of 20 years. The total benefits assessed and the total amount to be collected being approximately 9/10ths of 1% of the assessment and taxes to be collected in the road district.

Testimony was introduced showing that no crude oil is delivered or distributed in Miller County, but same is carried through pipe lines to the Standard Oil Refinery at Baton Rouge, Louisiana.

This court will take judicial knowledge of the fact that gasoline and lubricating oil are the principal products produced in the refining of crude oil, and that among the by-products one of the principal ones is the asphalt used in surfacing roads and streets.

This court will further take judicial knowledge of the fact that gasoline and lubricating oil are largely

used by motor vehicles and that the building of the good roads has been the principal cause of the marvelous increase in the use of motor vehicles and the enormous consumption of gasoline and oil.

It therefore appears that from the building of these roads in Miller County together with the connecting good roads in Arkansas and other states, the use of the pipe line has been so increased that from the one original line, now four lines have been laid from Oklahoma through Arkansas and Louisiana to Baton Rouge; as was stated in *Branson* v. *Bush*, no agency for the development of a territory equals that of good roads.

The attorneys for the petitioner and respondent are the same who appeared before this court in the Prairie Pipe Line case so strongly relied upon by the petitioner. Some members of this court may remember that after the statement of facts had been made by respondent's attorney in said Prairie Pipe Line case, one of the associate justices asked why the case had not been brought before the court on *certiorari* rather than on appeal, and upon respondent's attorney replying that *certiorari* had been applied for and the writ refused, said associate justice had the application for said writ sent for and found it was then too late to grant same because barred by the time limit.

If this court could have heard the Prairie Pipe Line case on its merits, doubtless this cause and others that have since vexed the circuit court of appeals for the eighth circuit would never have been brought.

Now that the holding of the Eighth Circuit Court of Appeals on the points at issue in this cause is again at one with and uniform with the repeated holdings of the Arkansas Supreme Court and of the United States Supreme Court, it is cause for congratulation rather than the issuance of the writ of *certiorari.*

Respectfully submitted,

HENRY MOORE, JR.,
Attorney for Respondent.

FILED
APR 11 1928
CHARLES ELMORE CROPLEY
CLERK

No. 577.

In the Supreme Court of the United States

OCTOBER TERM, 1927.

STANDARD PIPE LINE COMPANY, INCORPORATED, PETITIONER,

VS.

MILLER COUNTY HIGHWAY & BRIDGE DISTRICT, RESPONDENT.

ON WRIT OF CERTIORARI TO THE U. S. CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

MOTION TO DISMISS, BRIEF AND ARGUMENT FOR RESPONDENT.

HENRY MOORE, JR.,
Attorney for Respondent.

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VS.

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ON WRIT OF CERTIORARI TO THE U. S. CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

STATEMENT OF THE CASE.

Miller County Highway & Bridge District was organized by Special Act of the Arkansas Legislature, No. 153 (see page 617, Acts of Arkansas, 1915). It was found that funds were not available to build both the roads and the bridge and during the year 1917 a special act was passed by the Arkansas Legislature authorizing the bridge built to be paid for jointly by Miller County and Little River County, Arkansas.

Another act was passed authorizing the roads built separately from the bridge and confirming the assessments of benefits that had already been made under the Act of 1915 (see Act 15, page 61, Acts of Arkansas, 1917).

A third act authorizing certain of the roads that had been originally constructed with a gravel surface, to be paved with hard surface material and again confirming the assessment of benefits in the road district, was passed by the General Assembly of the State of Arkansas during the year 1925 (see Act No. 83, page 245, Acts of Arkansas, 1925).

The burden of the road taxes on the lands alone had become very great and during the year 1923, a special session of the General Assembly of the State of Arkansas passed the so-called Harrelson Act increasing the tax on gasoline to three cents a gallon and out of said funds paying about one-third of the annual bond and interest payments of the various road districts in Arkansas (House Bill No. 55, Harrelson, Act No. 5, Extraordinary Session of the General Assembly of the State of Arkansas, approved October 10, 1923).

The issues involved in this action have now become a moot question save for six years taxes (1919 to 1925 inc.). Even after the assistance of the payments made under the Harrelson Act, the burden of road taxes had become so great as to virtually confiscate the lands in many counties of the state and public opinion became crystalized to the effect that parties using the roads should pay to build and main-

tain same rather than the lands in the counties through which the roads pass. Governor J. E. Martineau, now U. S. District Judge for the Eastern Division of Arkansas, was elected on a platform to remove all road taxes from the land and the so-called "Martineau Act" was passed during the year 1927 increasing the tax on gasoline from three cents to five cents a gallon. From this fund, with the federal aid obtained, all roads are being built and all bonds and interest heretofore issued have been assumed by the State of Arkansas and no road taxes have been paid by any lands, pipe lines, railroads, etc., since the year 1926 (Act No. 11, page 17, Acts of Arkansas, 1927). Printed in full as appendix to brief.

The petitioner, Standard Pipe Line Company, Inc., on May 21, 1924, brought this suit in the U. S. District Court at Texarkana, Arkansas, to enjoin the collection of further road taxes on its right-of-way and pipe lines, said petitioner had already paid its road taxes for three years before bringing this action.

The respondent, Miller County Highway & Bridge District, filed its motion to dismiss petitioner's bill as petitioner had not availed itself of the administrative remedies afforded by the statute to have its tax removed or reduced. The district court overruled such motion to dismiss and upon trial on the merits found in favor of the petitioner and enjoined the collection of the tax at issue. Upon appeal, the Circuit Court of Appeals for the Eighth Circuit reversed the decision of the district court and the cause is now here on writ of certiorari.

PLEADINGS IN THIS CAUSE.

The petitioner, Standard Pipe Line Company, Inc., alleges in its bill that it purchased from the Prairie Pipe Line Company and now owns an oil pipe line located through Miller County, Arkansas, through which it transports crude oil from the Oklahoma oil fields to its refinery at Baton Rouge, Louisiana.

That the respondent, Miller County Highway & Bridge District, is a *quasi* corporation, organized by special act of the General Assembly of the State of Arkansas, during the year 1915; and that said road district has built hard surface roads aggregating a total of more than seventy miles and has assessed the pipe line together with all the other real estate in the district for the purpose of raising funds to pay for said roads.

That said pipe line is personal property and not subject to such assessment and that said pipe line has in no manner been benefited from the construction of the improved roads in the district.

The respondent, road district, filed its motion to dismiss the petitioner's bill on the grounds:

First. That under the decisions of the Supreme Court of the State of Arkansas, the petitioner's pipe line, which owns a right of way is real estate and subject to be assessed for improved roads.

Second. That the petitioner and its predecessor in title had not appealed from the assessment of benefits

within the time limit set by law, thirty (30) days, after such assessment was made by the commissioners.

Third. That the petitioner had not pursued or attempted to pursue its remedy at law to obtain redress and relief from the assessment complained of in said bill; and that the plaintiff had a full, adequate and complete remedy at law.

Fourth. That the time within which petitioner's action should have been brought, has expired and defendant pleads the bar of limitations against same.

Said motion to dismiss was, by the district court, overruled, and respondent excepted to such ruling. The petitioner then filed its amended and substituted bill in equity, setting forth at length the same facts as stated in the original bill, and further stating that the assessment of benefits made by the road district is five thousand dollars per mile for the twelve miles of right of way or a total of sixty thousand dollars; that of such assessment one per centum six hundred dollars, has been levied to be collected annually from the petitioner; that if petitioner is required to pay such annual assessment of six hundred dollars, this will interfere with the petitioner's rights in interstate commerce and will cause petitioner to suffer irreparable loss and injury; that neither the petitioner nor the Prairie Pipe Line Company from whom petitioner purchased the pipe line in question, had any knowledge of the filing of the benefits by said road district, and that the secretary of the road district did not publish the notice required by law as to the filing of such assessment of benefits; and prays that the road district

be perpetually enjoined from levying any tax against the petitioner's pipe line situate within the district in Miller County, Arkansas.

The respondent answered, admitting the making and filing of the assessment of benefits for the district and stating that the land was divided into zones, the land in the first zone, one mile from the road being assessed a benefit of thirty dollars per acre; in the second zone two miles from the road, twenty-five dollars per acre; and in the third zone three miles from the road, twenty dollars per acre, and admitting that the total assessment of benefits against the twelve miles of petitioner's pipe line right of way is sixty thousand dollars.

The respondent stated that in assessing benefits against the pipe line, the assessment for state and county purposes was used and in assessing benefits against the real estate in the City of Texarkana, Arkansas, and the telephone, telegraph, gas lines and other public utilities the assessment for state and county purposes was used; that said *ad valorem* basis was used in assessing all property in the road district excepting the lands in the country where the zoning system was used as hereinbefore set forth.

The respondent denied that the assessment is arbitrary, discriminatory or in violation of rights guaranteed the petitioner under the United States Constitution and further alleged that the original assessment of benefits save as to country lands was affirmed and reenacted during July of the year 1920; the re-assessment

was made because of the relocation of some of the roads in the district, which relocation changed the distance of certain lands from the road, thus causing said lands to be placed in different zones according to the location of said roads. No change was made in the assessment of the pipe line, the real estate in the City of Texarkana, Arkansas, nor in the assessment of the other public utilities and the reassessment was the same as the original assessment save for the re-zoning of the country lands due to the changes in the location of said roads.

The respondent alleged that by Section 6 of Act No. 15, passed by the General Assembly of the State of Arkansas, during the year 1917, the assessment of benefits in the road district was ratified and confirmed and that such assessment of benefits was declared to be just, equitable and proportionate; and said assessment was again ratified and confirmed by Section 7 of Act 83, passed by the General Assembly of the State of Arkansas, during the year 1925.

The respondent admitted that for four years one per cent of the assessed benefits, six hundred dollars, per annum was levied against the petitioner's pipe lines, but alleged said rate had now been reduced because of payments made by the state out of the gasoline fund collected for distribution among the road districts of Arkansas.

The respondent denied that the assessment of benefits against petitioner's pipe line and telegraph line was arbitrary, unlawful, discriminatory and unwarranted, but alleged that on the contrary petitioner had

received a great benefit from the building of the good roads.

The respondent alleged that the petitioner had not appealed from the action of the board of assessors and the commissioners in levying the benefits against their pipe line within the time allowed by law and had not attempted to pursue the remedy at law to obtain redress and relief from the assessment complained of and therefore petitioner has no right of action in a court of equity.

The respondent further plead the statute of limitations and estoppel.

After a trial on its merits the district court rendered its decree in favor of the petition, the cause was appealed to the U. S. Circuit Court of Appeals for the Eighth Circuit and said court held following the decisions of the State of Arkansas that the pipe line is real property; that the assessment of benefits for road purposes is not an interference or unlawful burden on interstate commerce; and that the legislative determination of benefits to the pipe lines and telephone lines of petitioner was justified.

The decree of the district court was reversed and petitioner has brought said cause before this said court on Writ of Certiorari.

TESTIMONY.

T. B. Morris testified on behalf of petitioner. I am the bookkeeper for the Texarkanian, a newspaper published in Texarkana, Arkansas. He identified the notice of the original assessment of benefits of the road district published in April and May, 1916; and the notice of reassessment of benefits published in July, 1920. Copy of such notice appears as Exhibit "A" to his testimony.

The witness testified that Mr. Hillford, the general manager of the Pipe Line Company lived at Mandeville during the year 1920 and was a subscriber to the Texarkanian (R. pages 38 to 40).

David Elkins, County Clerk of Miller County, Arkansas, testified; that he had understood that the book containing the assessment of benefits had been filed in the county clerk's office prior to the time he was elected clerk (R. page 42).

Louis Josephs testified on behalf of petitioner. I am the secretary of the road district. I identify this as the original book containing the assessment of benefits. The file marks have been cut out. I found the book in the office of Morris Sanderson, who was formerly the attorney for the district. I know this is the original assessment book.

The valuation of the poles, pipe, wire, plant etc., of the Prairie Pipe Line Company in the district is $59,-

340.00. The assessment of benefits is the same as the valuation for state and county purposes, $59,340.00.

This book was in my office before it was filed with the county clerk of Miller County. I saw the book several times after it was filed with the county clerk. The next time I saw it it was in Morris Sanderson's office.

A total of $540,000.00 in bonds has been issued from December 5th, 1916, to March 15, 1922. All bonds have been paid as they matured. There are now outstanding $353,500.00 of said bonds.

I know the notices required by law of the filing of the assessment of benefits were published as I, as secretary, issued vouchers payable to the Texarkanian, the paper publishing said notice. After the reassessment of benefits was made, the Board of Assessors met to hear complaints. This reassessment was made in 1920 and shows the benefits against the Prairie Pipe Line Company to be $60,000.00.

All of the City of Texarkana, Arkansas, is included in the road district and the north half of Miller County.

I did not assist in making the reassessment of benefits, I was the secretary of the road district and know that the assessors held hearings on such reassessment.

Mr. Webber presented a petition asking a reduction for the Two States Telephone Company; and Mr. David Arnold, one of the attorneys for petitioner, appeared on behalf of the Southwestern Gas & Electric Company; and Mr. Henry Moore, Jr., appeared on behalf of certain clients. These hearings were held in the State National Bank Building before the Board of Assessors where it regularly met.

During Mr. Hillford's administration as general manager for the Prairie Pipe Line Company, Morris Sanderson was his attorney (R. pages 45 to 57).

George T. Conway testified on behalf of the petitioner. I am one of the assessors for the Miller County Highway & Bridge District and have served as assessor since the district was organized and was assessor when the original assessment was made and when the reassessment was made. The country land was placed in zones, the land within one mile of the road in Zone 1, was assessed a benefit of $30.00 per acre; that within two miles of the road in Zone 2, was assessed a benefit of $25.00 per acre; and within three miles of the road and beyond in Zone 3, and assessed a benefit of $20.00 per acre. We thought the benefit from the road was due to the location of the road and the proximity of the land to same and not to the quality of the land. We assessed the benefit to the Pipe Line Company at $59,340.00 the amount of the assessment of the pipe line for county and state purposes. We used the same basis for the other utilities, Gas & Electric Company, etc., after the notice of the first assessment, numerous hearings were held at the courthouse to hear protests, some of them almost becoming indignation meetings. I suppose we met with a dozen different corporations including the Missouri Pacific Railroad Company. The original assessment book was filed with the county clerk and I got him to give it to me when we were holding these meetings.

We made a reassessment of benefits four or five years later, during the year 1920, the lands outside of the city were assessed in zones just as they were the first time with reference to the proximity of the land to the road. The Prairie Pipe Line Company was assessed $5,000.00 per mile of right of way or a total of $60,000.00. In Texarkana we again used the *ad valorem* basis and assessed benefits at the same as the assessment for taxes for state and county purposes, a total difference of a few hundred dollars in the reassessment of the Pipe Line Company from the original assessment, possibly was made as a matter of bookkeeping.

Morris Sanderson, the attorney for the district, advised us in making the assessment. We did not arbitrarily assess the Pipe Line Company, but we thought they would be benefited to the amount of the assessment from the good roads and in using the road going to and from their work.

Mr. Hillford, the manager of the Pipe Line Company, had his office right next to mine during his life time. I knew him quite well and he made no complaint and received no complaint that I know of about the assessment from the Prairie Pipe Line Company. The 31½ acres on which the pumping plant of the Pipe Line Company is situate is right on the road and although the most valuable piece of land in the district, outside of the City of Texarkana, it is assessed a benefit of $30.00 per acre, the same as other land in Zone 1.

In assessing the benefits in the City of Texarkana, we used the assessment for state and county purposes as the amount of the benefits.

The assessors did not do the clerical work, but employed J. H. Thomas to do same. They instructed him as to the benefits to be assessed against each tract of land and saw that this was done before signing the assessment roll. The public utilities were assessed the same as the real estate in the City of Texarkana, the benefit assessment being the same as the tax assessment for county and state purposes.

Under the Act of 1917, under which the second assessment was made, a different procedure was used than in the original assessment. The assessors were ordered to show the valuation of the lands as they appeared on the county tax books and to show the value per mile of the railroad, gas, electric light lines, telegraph or other public utility and pipe lines as they appear on the county tax book and then opposite each piece of property was placed the name of the owner and the amount of the betterment. The reassessment was made because the roads were changed from the location as originally laid out, and this caused some lands in zone one to go into zone two, and vice versa, some land in Zone 2 or 3 went into Zone 1. The roads had been built when the reassessment was made. The benefits to the property in the City of Texarkana and the public utilities remained the same as before, being assessed a benefit equal to the amount of the assessment for county and state purposes.

The two railroads, the St. Louis Iron Mountain & Southern (now the Missouri Pacific), and the St. Louis Southwestern Railway did not show on the reassessment as the Missouri Pacific Ry. paid $25,000.00 in cash and

the Cotton Belt Railroad Company (St. Louis Southwestern Railroad), about the same amount. This compromise agreement was ratified by Act of the Legislature.

The office of the Prairie Pipe Line Company was next door to mine at that time on the same floor of the State Bank Building and I was well acquainted with Mr. Hillford, the then manager of the Prairie Pipe Line Company. Mr. Hillford knew about the assessment of benefits both the first time and the reassessment.

Ten years ago we were not as familiar with improvement districts as we now are and before making the assessment, the assessors secured all the local information and help that they could and wrote all over the country asking for information. We went into this fully and had various meetings to reconcile the contending factions and still think the system we used one of the fairest and most reasonable ways in which one can arrive at benefits received from an improvement of this kind. After this investigation, we decided to use the zoning system for the country acreage and the *ad valorem* system for the city property, public utilities, telegraph lines and pipe lines.

When the first assessment was made, we were working continuously adjusting and equalizing the matter for thirty days or six weeks. When the second assessment was made I had my office in the State Bank Building and the other assessors met with me from day to day whenever I sent for them. We did not stay in session all the time. After hearing any one,

if no one else appeared, we would adjourn until another day (R. pages 58 to 72).

A. B. Little a witness for the petitioner, testified; during the years 1915 to 1917, I assisted the tax collector in collecting revenues in Miller County, Arkansas. I knew Mr. Vantuil, who paid the taxes for the Prairie Pipe Line Company, and called his attention to the fact that we overlooked the road tax in furnishing his tax statement. Witness identifies letters written and received from Mr. Vantuil, tax commissioner for the Prairie Pipe Line Company during April, 1917; also identifies tax voucher of the Prairie Pipe Line Company paying the road taxes of date April 26th, 1917 (R. pages 73 to 79).

W. D. Fulton a witness for petitioner testified: I am the chief engineer of the pipe line company. He identified the map of the district attached to the transcript. During the year 1920, there were 25.49 miles of pipe line in the district. The Standard Pipe Line Company acquired the pipe line right of way of the Prairie Pipe Line Company in December, 1922. There are approximately twelve and one-half miles of right of way occupied by the pipe line in the road district, and at present time there are laid 51.25 miles of pipe on said right of way; also a telephone line was built on the right of way during the year 1923. Two lines of pipe that were laid have to my knowledge been taken up. This was done during the spring of 1924 and winter of 1924 and 1925.

In 1923, two additional lines were put through the entire district and pipe was unloaded at Paup's Spur and we used trucks and teams and hauled the pipe over the improved gravel roads. I do not know whether the pipe was unloaded at the side of the gravel road or was usually hauled to where it was to be laid. I admit we could haul more over the gravel road than we could over a dirt road, certainly we can haul cheaper and quicker over hard surface roads than over dirt roads. We used about sixty men for six months in building the pipe line and would drive over these roads inspecting the pipe line. The company had regular trucks that came to Texarkana for men and took them to and from their work. I do not think this was any benefit to the company, but only to the men who rode in the trucks. The pumping station and headquarters at Mandeville are right on the public road and any one living there would know the road was being built. I think the road would benefit a farmer. I do not think a road will benefit a pipe line or a business though it would the parties who worked at and who owned the business (R. 80 to 94).

Copy of form of right of way deed used by the company appears at (R. 96).

R. A. McGrew a witness for petitioner testified: I am the vice-president of the Standard Pipe Line Company. During the year 1922, we had two lines of eight (8) inch pipe laid on right of way in the road district. I do not consider that the good roads have helped this pipe line.

The pipe line enters Arkansas from Oklahoma, goes into Louisiana and ends at Baton Rouge where the refinery is located. The oil transported comes from the State of Oklahoma. The replacement cost of eight inch pipe line in this territory during 1920 was eleven thousand five hundred dollars per mile. Unless hard surface roads were constructed especially for pipe line construction, they would not benefit the pipe line. Sometimes it may cost in excess of one thousand dollars per mile to haul pipe, the general average is about four hundred dollars per mile. I have only been on the right of way of this line once.

The benefit from a good road does not come to the property or the houses, but to the owner of same. Generally speaking, I do not consider that good roads would give any excess of labor that could not be had without them. The laborers in working on the pipe line were carried over these good roads in trucks. I do not know whether it would be any benefit to a plantation to have good roads on which laborers could be taken to work on the plantations. I cannot tell whether good roads would benefit any kind of enterprise or business by giving a way to carry laborers to that business. We have a fleet of trucks and we use them everywhere in this territory (R. 97 to 112).

W. J. Springer a witness for respondent testified: I am chief of the joint fire department of Texarkana, Arkansas and Texas. One day last week, with the crews of the Texarkana Fire Department, I made a run over the good road about six miles to Mandeville and

assisted in putting out a fire at the pumping station of the pipe line company. I made the run in about fifteen minutes. On reaching there I advised those in charge what should be done and my men with the pipe line company men, under my direction got the fire under control. It is problematical to say what would have taken place had I not been there. The property was saved from burning and except for the good road I could not have answered their call. Our equipment weighs about seven and one-half tons and I might have torn it up or killed some of my men if I took it over ordinary country roads. I suppose the parties in charge accepted my suggestions because of my knowledge and experience in fighting fires. They were very nice and seemed willing to have me advise them. We did not go of our own suggestion, but at the request of the pipe line company our apparatus was taken out there (R. 113-117).

E. L. Stern a witness for petitioner testified: I am superintendent of the Texas Pipe Line Company in Louisiana. I can not see that the improved roads are of any advantage to pipe lines. I know nothing about the pipe line under discussion. I do not think good roads would help telegraph or telephone lines. A good road may help a pipe line in reducing the cost of stringing the pipe, but this is small. Good roads may help a farmer if he hauls with trucks. I do not believe a good road would help an iron foundry or any other kind of business. It would not help a pipe line company for a

good road to give access to same. If I had a road parallel to a pipe line I would prefer to haul over a hard surface road. Naturally we use the good roads as they furnish the most economical way (R. 117-121).

H. C. Black a witness for petitioner testified: I am the tax commissioner of the Prairie Pipe Line Company and have been such commissioner since July, 1919. I render the tax assessment and pay the taxes for the entire system which extends from middle Texas through Oklahoma, Kansas, Missouri, Illinois and Indiana. We also owned the pipe line in Arkansas from the Oklahoma-Arkansas line to the Arkansas-Louisiana line. The Standard Pipe Line Company owns the line that we connected with in Louisiana and has since bought the line in Arkansas from the Prairie Pipe Line Company.

In determining the value for assessment purposes of our pipe line in Arkansas, the tax commission took into consideration the earnings of the pipe line.

Mr. J. B. Hillford is dead. During his lifetime he was the maintenance superintendent of the pipe line company. He had an office in Texarkana and looked after the operation of the pipe lines. From his office in Texarkana there was a private wire over which he had direct telegraphic communication with the home office in Kansas. He made certain reports daily as to the amount of oil and condition of the lines and also reported anything else of interest to the company.

Mr. Vantuil was the tax commissioner when the Miller County Highway & Bridge District was organized, and remained tax commissioner until his death about

July, 1919 when I succeeded him. Taxes were paid to the road district by the Prairie Pipe Line Company for three years, 1916, 1917 and 1918. I had the injunction suit brought to prevent the payment of the road taxes for the year 1919, after I took charge of the tax department. I went through the files in reference to taxes due Miller County Highway & Bridge District and learned about same prior to the payment of taxes due in April, 1920. During the year 1919 I knew that these road taxes had been assessed against the pipe line company.

As the reassessment made an increase of only $200.00 in the total of the benefits assessed, I know the increase in the amount of taxes due the road district for the year 1919 was because of an increase in the rate.

I was in the right of way department of the company from February, 1915, until July, 1919. I have heard that two additional eight inch lines have been laid by the Standard Pipe Line Company since they purchased this property and I agree that it would be bad judgment to lay additional lines unless the production had increased so the lines are needed (R. page 121 to 134).

H. G. Sanderson a witness for respondent testified: I am the collector and tollkeeper for the bridge across Red River near Index and have held such position since September, 1923. You must go over the good roads in Miller County to reach said bridge. During the years 1923 and 1924 the pipe line company used trucks and hauled a great number of men over the roads and across

the bridge; also pipe. During the last seventeen days of October, 1923, they paid by check $173.45 in tolls for trucks and teams that crossed the bridge. Autos are charged 50c, light trucks 75c, and heavy trucks $1.00. They also had a number of two and four mule wagon teams. The trucks carried pipe, tools and other materials. Also they had trucks that hauled men out to work. One truck hauled white men and made two or three trips every day. The trucks could not get to the bridge without going over the good roads. In addition to the money paid me set forth above, by check, for the pipe line company, additional amounts were paid me in cash.

This work on the pipe line went on from the first of September, 1923, until the latter part of 1924. The entire fall of 1923 and all of 1924. The work was digging up and distributing pipe, digging ditches, putting in new pipe, joining it up and painting it.

I have had considerable experience in farming and helped build good roads in Little River County. It is an advantage to have a good road over which men and materials may be transported. It is a whole lot cheaper to haul over a good road, than over the ordinary dirt road. The loads the pipe line company hauled could not have been brought at all over common country roads. They hauled pipe out on trucks and unloaded by the side of the road and then re-loaded on wagons and hauled it out on the line. The trucks hauled from Mandeville and Paups Spur a distance of about 7½ miles. The amount paid me for tolls by the pipe line company in October would probably be over an average

of the amount paid for the other months of 1923 and 1924. In my opinion by means of the good roads the cost of hauling the pipe was cut in half. The pipe line company hauled pipe across the bridge both ways. They brought the old pipe from Little River County into Miller County, and hauled new pipe from the railroad at Mandeville and Paups Spur across the bridge into Little River County.

From my place on the bridge I could see a mile and one-half down the highway and I know the pipe were hauled out on trucks and unloaded by the good road, then it was re-loaded on wagons and hauled along the pipe line right of way. They would haul four or five joints of pipe on a wagon and twelve to fifteen joints on a truck. The road crossing the bridge from Ogden into Little River County is a dirt road. In winter it gets nearly impassable. It was cheaper to haul from Paups Spur over the good road and across the bridge than to haul the pipe a shorter distance from Ogden over the dirt road. Regardless of the reason, I know the pipe line company hauled the new pipe from Mandeville over the good road and over the bridge into Little River County and picked up the old pipe and hauled back into Miller County going toward Mandeville with it (R. 135-144).

D. B. Owens a witness for respondent testified: I worked for the pipe line company about three months during the summer of 1921, acting as time keeper for them. They were putting down about two miles of pipe in a loop from Ogden across Red River and were work-

ing eighty to ninety men. Mr. Hillford was superintendent of the job. These men went to their work principally in auto trucks, coming from Texarkana ten or fifteen miles over the hard surface road. Ice and supplies were hauled out in trucks over said road and pipe and river clamps put around the pipe were hauled out from Paups Spur over the road. Enough pipe was hauled to put down two miles. Hauling was done mostly by trucks. It was unloaded along the good road and distributed with wagons and teams. It was too rough for trucks to go in the woods and the ground was too soft. On the hard surface road, the trucks carry ten or fifteen joints, on the dirt road wagons were used, after the pipe was unloaded from the trucks and they carried three or four joints. Work was done on both sides of the river. If there had been no good roads to haul over, I think the pipe would have been unloaded at Whatley a switch on the Kansas City Southern Railroad. J. B. Hillford was in complete charge of everything for the pipe line company (R. 146 to 155).

L. F. French a witness for respondent testified: I have been for more than twenty years in the contracting business doing levee and road work and hauling. During the years 1923 and 1924 I hired my teams by the day to the Standard Pipe Line Company. I hauled for them between 45 and 60 days in Miller County, crossing the river and hauling for them in Little River and Sevier Counties. I used mules and wagons and hauled some pipe from Mandeville and from Paup Spur over the good road to the pipe line right of way

and hauled some from the storage piles on the good road along the pipe line right of way.

It was about three and one-half or four miles from Paup Spur to the distributing point on the good road where the pipe was unloaded. This being the point where the pipe line crosses the good road. On the gravel roads the teams can haul all the wagons will hold. It is simply a matter of the capacity of your wagon. After leaving the hard surface road, I think I pulled six to eight joints. I do not think the company distributed any pipe on its right of way with trucks, but hauled them all on the good roads and placed them in piles where the good road crosses the pipe line right of way. It is a great advantage in hauling heavy materials such as pipe, to have a good road over which you may haul. I did not haul any pipe from the Kansas City Southern Railroad until I crossed the river into Little River County.

There is no good road after you cross the bridge, between the bridge and Ogden. In hauling from Paup Spur there was no way to get out to the pipe line except over the good road. In hauling with trucks the pipe line company did not take the trucks off the gravel road. Along the pipe line right of way at times it was such bad hauling that all wagons would have to be unloaded and the pipe snaked or skidded along the right of way one at a time. One single bad place would keep you from hauling a load across same (R. 173 to 180).

W. J. Paulk, a witness for respondent testified: I have been employed as an accountant for the Miller County Highway and Bridge District for several years. In the bottoms cleared land is assessed at $10.00 per acre, and the average wild land $4.50 in the hills, the assessment is $5.00 to $6.00 per acre for general taxation. The assessment of benefits for road purposes in the entire road district is $6,687,178.00. The assessment of benefits for road purposes in the City of Texarkana is $2,561,000.00. Outside the City of Texarkana such assessment for road purposes is $3,664,445.00. The total acreage of land in the district is 136,322 acres. The average assessment of benefits for road purposes per acre against the land outside the city is $26.88 per acre.

On the assessment of benefits there was levied for road taxes the following percentage:

1916	6-2/3 mills
1917	6-2/3 mills
1918	7 mills
1919	7 mills
1920	10 mills
1921	10 mills
1922	10 mills
1923	10 mills
1924	8.5 mills

The benefits assessed against any track of land are multiplied by the number of mills for the year levied, and the result is the amount of taxes that must be paid for road purposes by that land for said year. The assessment for the purpose of general taxation is not considered and has no bearing on the collection of taxes for

road purposes, the road taxes being levied on a benefit basis (R. 180-182).

E. H. Peyton, a witness for respondent testified: I operate a farm at Paup Spur and have been staying on the farm practically all of the time since 1917. The good roads had not been completed when I moved there. In the hills there were passable roads, but if one went into the Red River bottoms, after a rain they were impassable. An auto could not be used at all. It took four mules to pull a two mule load. There was no road of any kind between Paup Spur and the bridge at Index. One had to just wander around through the woods to get there.

During the year 1921, the pipe line company unloaded a large quantity of pipe at Paup Spur, I understand about twenty-one cars. Trucks hauled the greater part of this out on the gravel road and placed it in dumps and from there it was distributed on the pipe line right of way by teams. My teams hauled during that time for the pipe line company. After you left the good road there was no road through the woods. It was very wet and bad at times and two or three pipe were all we could haul at a load after leaving the good road. On the good road, it was not a question of what your teams could haul as they could pull all the wagons would hold up. I have seen trucks go out from Paup Spur over the good road with fifteen to twenty pipe. In hauling with wagons from the dumps where the pipe was put along the good road, it would be so bad on the pipe line right of way that we would unload our wagons

and hitch a pair of mules to just one pipe and snake it along the right of way.

My farm will not raise any bigger crops because of the good roads, the advantage from a good road is making a place accessible. The pipe line company has been benefited as you can go close to their line at almost every point on a good road and they can haul their materials and men over the good roads to work on and repair the line. They haul men in trucks from Texarkana and many of the men came to work in their own cars. During the year 1921, at one time they worked about one hundred fifty men. Work was commenced again on the pipe line in the year 1923 and finished during the year 1924, and a quantity of pipe was unloaded at Paup Spur. The pipe were taken out over the good road from Paup Spur in trucks. They hauled from fifteen to twenty pipe at a load. The trucks could not leave the good road. They did not work as many men as in 1921, working this time perhaps seventy-five to one hundred men. I would see the trucks coming by my place to work with 25 to 30 men on a truck. The pumping station is right along the good road and the men at work there came out in cars and trucks from Texarkana.

While this work was going on, old pipe that was taken up in Miller County and from across the river was brought in to Paup Spur over the good road by trucks. It was hauled by teams to the good road, then the trucks were loaded and brought it in. There were two distributing points or dumps on the good road, one

on Dr. Collins' farm and the other near the bridge at Red River (R. 183 to 189).

L. C. Adams testified: I live at Texarkana and I am vice-president of the road district. I own a farm in Red River bottoms. There was no road from Paup Spur to Index so one could go into Little River County before the good roads were built. In dry weather one could haul in the bottoms, but when it was wet, I had to use four and sometimes six mules to haul a two mule load. We shipped our cotton from Homan because we could not haul it to Texarkana. Now I can bring in 16 to 20 bales over the good roads with a four mule team. In the bottoms the land is black buckshot, so it is impassable in wet weather.

Within the last two weeks, since the fire at the pumping station at Mandeville, a large number of workmen have been coming out over the good roads in trucks and cars. I formerly ran a livery business and have had considerable experience in hauling. I think the pipe line company has been greatly benefited by the good roads. They can haul four times as much over the good roads as over the dirt roads. The only way anything can be benefited by a good road is by the traffic over same. It does not make the farm raise any more. The benefit of good roads is from accessibility.

Some of the cleared lands are now worth $100.00 per acre, and some of the woodland, $40.00 per acre. The increase in value has come from a variety of circumstances. The first advance was because of the

levee being built, then the land advanced because a drainage ditch was being dug, then from the highway being built and being close to Texarkana; also the advance in the price of cotton made land go up (R. 189 to 194).

The two acts creating the district and act creating Red River Bridge District were introduced in evidence. Under Section 7 of the 1915 Acts, parties aggrieved by the assessment made on their land, must appeal in thirty days from the board of assessors to the commissioners and if still aggrieved then appeal in thirty days to the County Court of Miller County.

C. S. Christian a witness for the respondent testified: I am a civil engineer and have resided in Texarkana for fourteen years. I was the engineer in charge when the Miller Levee District was built and am still its engineer. I was the engineer in charge of building the roads in Miller County Highway & Bridge District and am still its engineer. Said roads were commenced in 1917 and completed, I believe, during the year 1918.

Witness identified the map introduced in evidence showing the location of the pipe line and the good roads. The pipe line is crossed by the good roads at four different places and said roads are within a mile and one-half to two miles of all parts of the pipe line.

Before these roads were built there was a county road from Texarkana along the Missouri Pacific Railroad to Fulton. There was no road from Paup's

Spur to Index. Most of this country was in the woods and you could not go through with wagons; at times when it was wet you could hardly go through on horseback. On the road from Texarkana to Fulton the bridges were wood and in bad condition. The road had only a natural dirt surface and even in dry weather continuous hauling of heavy loads would have cut it up so bad that it would have become practically impassable. There is still no improved road between Index and Ogden on the other side of the river. It is a decided advantage to haul over hard surface roads, the load limit can be increased and much higher speed maintained, thus reducing the cost of hauling. Before these hard surface roads were built over the county roads, there were seasons of the year when you could not haul an empty wagon over same. During a dry season 2500 pounds would have been a good load for a farm wagon.

J. B. Hillford was superintendent for the Prairie Pipe Line Company in Miller County during the year 1921. He came to see me at various times to secure permission so his company could make crossings with the pipe line over and through the levees.

The road known as the Richmond road from Texarkana into Little River County, is about eight miles west of the state line in Texas. There was no road from Texarkana to Ashdown and one had to either go by train to Ashdown or by horseback through the woods. The State Line Road from Texarkana to Index was built in 1917 when Miller County Highway & Bridge District was formed. Except the road from

Texarkana to Fulton there were only farm roads through the north end of Miller County in the Red River bottoms, there were no public roads there (R. pages 156 to 172).

On being recalled, *R. A. McGrew*, vice-president of the pipe line company testified: That his estimate of the cost of reproduction of the pipe line is $11,500.00 per mile for one string of 8-inch pipe; that it would cost four times that or $46,000.00 per mile a total of $552,000.00 to replace the four lines of pipe now laid along the 12 miles of right of way owned by the pipe line company (R. 235-236).

Louis Josephs, secretary of the district on being recalled, testified: That the total assessment of benefits against the pipe line company is $60,000.00. That as shown by W. J. Paulk's testimony, 1%, 10 mills, has only been levied for four years, it being less for the other years; that if the total of 1% had been or should be levied for the entire period of the bond issue for twenty years, the total taxes to be paid by the pipe line company would be $12,000.00, but the present levy, which will continue, is only 8-2/3 mills a year (R. 236-239).

The map filed as an exhibit has attached a memorandum furnished by the pipe line company showing the assessed benefits for the property in the district, the number of miles of right of way owned by the pipe line company and the number of miles of pipe occupying said right of way.

Excerpts from acts passed by the General Assembly of the State of Arkansas affecting Miller County Highway & Bridge District.

Excerpts from Act No. 153, creating the district passed during the year 1915:

"The Board of Assessors shall within one hundred and twenty (120) days after their organization complete their duties by filing with the commission a list showing the description of the property of the district, the owners' names, as far as same appear from the last county assessment, and such corrections as they may ascertain should be made, and the valuation of each lot, tract or parcel of land, railroad, street railway, gas and electric light plant, water plant, tramroads, telephone and telegraph lines, pipe lines and all other franchises of whatsoever description in any way connected with the realty in said district without the improvement, and the valuation with the improvement, and the benefit estimated to accrue to each lot, tract or parcel of land, railroad, tramroad, street railway, gas and electric light plant, water plant, telegraph and telephone lines, pipe lines and all other franchises of whatsoever description in any way connected with the realty in said district by reason of the improvement; and shall file the same with the county clerk of Miller County for the inspection of all persons interested. Notice of the filing of said assessments shall be given by publication in one newspaper published in Texarkana, Arkansas, and said notice shall set a date not less than thirty days distant, and the place where any complaint may be made by any landowner, railroad, tramroad, street railway, gas and electric plant, water plant, telegraph or telephone line, pipe line or any franchise whatsoever in any way connected with the realty in said district before the Board of Assessors of any assessment made against his or its property.

The said Board of Assessors shall correct any inequality, injustices, or errors, which they may find in the assessment, and shall hold meetings for the purpose of hearing the complaints of the owners of any such property in said district as to said assessment, and shall increase or decrease the assessment so as to adjust the burden of the assessment to the benefit to accrue to the real property. * * * Any property owners as aforesaid, aggrieved by the action of said Board of Assessors, may take an appeal to the commission within thirty days from the action of the Board of Assessors, upon his complaint; or any other property owner (fol. 175) aforesaid may appeal from the action of the Board of Assessors from any assessment which acts unequally upon his property.

The commission shall hear all appeals and determine the same, and appeals may be taken from the commission to the county court in the same manner as is now provided by law that appeals may be taken from the county equalization board to the county court, which said appeal, shall be taken within thirty (30) days from the action of the commission complained of" (R. 199, 200).

"That all railroads, street railroads, tramroads, right-of-way, roadbeds, pipe lines, telegraph and telephone lines, and all other franchises in any way connected with the realty of said territory, and the appurtenances in said district, shall be assessed according to the betterments and increase in value in like manner as herein prescribed for real estate, except that said assessment shall be made per mile, and no error in the name and residence of the owners or the description thereof shall invalidate said assessment, if sufficient description of the property sought to be taxed is given to ascertain where it is situated" (R. 201-202).

"Section 15. In the event of the description of any lot, tract or parcel of property upon the list of the assessment hereinbefore provided to be made, shall for any reason be uncertain, indefinite or insufficient, then in any suit brought to enforce the payment of any assessment, the court shall have power to correct such description and enforce the collection of any assessment due thereon, having due regard for the rights of any parties who may have intervened" (R. 207).

Excerpts from Act No. 15, amending the Act creating the district so the bridge across Red River could be built by Miller and Little River Counties, Arkansas, and the highways in Miller County, constructed separately from said bridge, and ratifying the assessment of benefits made by the road district, passed during the year 1917:

"Section 6. The assessment heretofore made by the assessors for said district is hereby ratified and confirmed as the (fol. 188) assessments of the benefits which will accrue from the making of the improvements herein contemplated, and the assessors heretofore named by the board shall proceed to make a similar assessment upon the lands in Hempstead and La Fayette Counties hereby added to this district" (R. 214).

"Future assessments of benefits shall be made in books to be furnished by the board, which shall show the lands of the district as they appear on the county tax books, with such corrections as may be necessary, and shall also show the railroad, street railway, gas and electric light, water, tramroad, telephone, telegraph and pipe lines by the mile, and also all other franchises of whatever description in any way connected with the realty in the district. Opposite each piece of property shall be placed the name of the owner, if known to the assessors, and

the amount of the betterments. Such assessment shall be filed with the county clerk of Miller County, for the inspection of all persons interested; and upon its filing, the secretary of the board shall give notice by publication in a newspaper published in Texarkana, Arkansas, that the assessment has been filed, and shall set a date not less than thirty days distant and a place where any person interested may appear before the Board of Assessors and complain of the assessment of his property or of the assessment of any other property in the district.

At the time fixed in said notice the Board of Assessors shall meet and shall hear the complaints of property owners, and shall increase or decrease the assessments so as to adjust the burden thereof to the benefit that will accrue" (R. 215).

"Section 14. In the event the description of any lot, tract or parcel of property upon the list of the assessment hereinbefore provided to be made, shall for any reason be uncertain, indefinite or insufficient, then in any suit brought to enforce the payment of any assessment, the court shall have power to correct such description and enforce the collection of any assessment due thereon, having due regard for the rights of any parties who may have intervened" (R. 222).

Excerpts from Act No. 83, passed during the year 1925, ratifying the assessments made in the road district.

"Section 7. It is ascertained and hereby declared that the assessment of benefits of said district is just, equitable and proportionate, and the same is hereby ratified and confirmed and shall stand as the assessment of benefits of said district until a new assessment is made in the manner provided by the said Act No. 15 of 1917. Acts of Arkansas, 1925, page 249."

Excerpts from the so-called Martineau Act No. 11, passed by the General Assembly of the State of Arkansas, during the year 1927, requiring the state to pay all bonds and interest due by all road districts in the state out of the five cent per gallon gasoline tax and relieving the lands of the state from any taxes for road purposes.

"Section 3. The commission shall, as soon as possible ascertain the amount of the outstanding valid bonds issued by road improvement districts in this state, the dates of the maturities thereof, and the annual interest due thereon, and it shall be the duty of the Circuit Clerk of each county to furnish the commission with such information. The commission shall each year, beginning with the year 1927, allot to each road district in the state now having outstanding bond issues an amount equal to its bonds maturing during the year, together with the interest payable by such districts during the year, plus a paying charge of one-eighth of one per cent of bonds to be paid and one-fourth of one per cent of interest to be paid, and shall certify to the State Auditor the amount allotted to each road district. The auditor shall issue warrants for such amounts on the State Highway fund, and procure St. Louis, Chicago or New York Exchange for said amounts payable to the order of the Bank or Trust Company named as payee in the pledge or mortgage of the road district, and if more than one Bank or Trust Company be named as payee, then to one of the named payees. Such warrants shall state in the face of the warrant that it is for exchange payable to ..... Bank or Trust Company for the account of the particular Road District. Said Exchange shall be mailed in all cases to the payee at least ten days before maturity or payment date of bonds or interest." Acts of Arkansas, 1927, pages 18 & 19.

ARGUMENT.

Before discussing this cause on its merits, we wish to present the questions raised by motion to dismiss and feel that such motion is well taken and under the practice of the State of Arkansas and the repeated decisions of the U. S. Supreme Court, said motion to dismiss should be sustained and petitioner's bill dismissed.

MOTION TO DISMISS.

Respondent's motion to dismiss should have been sustained without a trial of this cause on its merits.

Under the Original Act of 1915, Section 7, any property owner aggrieved by the assessment of benefits could complain to the board of assessors to obtain a correction of any assessment, an appeal was granted to be taken within thirty days by the property owner from the action of the assessors to the commissioners of the road district and an appeal then allowed from the decision of the commissioners to the county court, such appeal to be taken within thirty days.

Under the Amendatory Act of 1917, Section 6. In case of reassessment of benefits, the board of assessors should meet and hear the complaints of property owners and increase or decrease their assessment in accordance with the benefits to be received. Any property owner aggrieved by the action of the assessors could appeal to the commissioners, such appeal to be taken within thirty days.

Although under the last act no specific authority to appeal from the assessment of road commissioners was granted, yet such authority is granted under the Constitution and laws of the State of Arkansas. In a matter involving the adjustment of the proportion of an indebtedness to be assumed by two counties, the commission appointed by the Legislature made the decision and though no right of appeal was specifically

granted, the Arkansas court held such right of appeal to exist under the Constitution. *Phillips County* v. *Lee County*, 34 Ark., page 243. Such has been the consistent holding of the Arkansas courts, even though the appeal is from a special proceeding authorized by the Legislature. See *Missouri Pacific Railroad Co.* v. *Conway County Bridge Dist.*, 134 Ark., page 297, and cases there cited.

The pipe line company, under the above acts, had a complete remedy meeting all requirements of the due process clause of the Fourteenth Amendment of the U. S. Constitution, and having failed to pursue the remedy provided, cannot now, after a delay of more than seven years bring this action in equity to obtain a review and avoidance of the assessment of benefits.

In an Arkansas case, after citing from the *State* v. *Railroad Tax Cases*, 92 U. S. p. 609, to the effect that where a party aggrieved has a judicial tribunal before which he may appear for the correction of such grievance, he must pursue such remedy, the court held:

> "Due process of law," said Judge Field in *Railroad Tax Cases*, 13 Fed. Rep. 752, "is deemed to be pursued, when after the assessment is made by the assessing officers upon such information as they may obtain, the owner is allowed a reasonable opportunity at a time and place to be designated to be heard respecting the correctness of the assessment and to show any errors in the valuation committed by the officers. Notice to him will be deemed sufficient if the time and place of hearing be designated by statute." This is the established rule. Cooley on Tax, (2nd Ed.) 364-5, and cases cited there and *supra*.

> And where an adequate remedy in the nature of an appeal is provided, as is done in our statute, the better opinion is that a mere error of judgment on the part of the board or a mistake in their conclusion, though arrived at without evidence where evidence is required, is not available in a collateral issue. The tax payer must pursue the remedy provided for his relief or abide by the finding of the board.

citing various cases from Arkansas and other states to support its holding; also stating:

> "Great mischief would follow in permitting the taxpayer to select arbitrarily his own time and tribunal to test the correctness of an assessment."
> *Board of Equalization Cases*, 49 Ark. p. 533.

In a later case the court reaffirmed the law as laid down above, holding:

> "The jurisdiction to fix this valuation is by legislation ordinarily placed with some officer or board; and boards or courts of revision are sometimes established. But the entire proceedings are statutory, and the statutory remedies provided to a party aggrieved by an over-valuation made within the jurisdiction of the particular officer or board must be pursued. As is said in the case of *Stanley* v. *Supervisors of Albany*, 121 U. S. 535: 'A party who feels himself aggrieved by overvaluation of his property for purposes of taxation and does not resort to the tribunal created by the state for correction of errors in assessment cannot maintain an action at law to recover the excess of taxes paid beyond what should have been levied on a just valuation.'"
> *Clay County* v. *Brown Lumber Co.*, 90 Ark. p. 417.

In a late case which has recently been affirmed by the U. S. Supreme Court, the Arkansas Supreme Court held:

"The third and fourth grounds of attack may be considered together. The court sustained a demurrer to that portion of the complaint which attacked the assessments on the grounds that they were made under a mistake of fact, and that there was a discrimination in favor of, or against, certain property owners. This action of the court must be affirmed, for there must come a time when such questions are foreclosed. It was upon the faith of these assessments that the district incurred obligations and issued negotiable bonds with which to pay them, and these bonds are owned by the investing public through the United States. The act expressly names the time when these questions are foreclosed, and that time is ten days after the completion of the hearing on the assessments by the commissioners, except as against property owners who, within that time, have applied to the chancery court for relief.

"We have in many cases upheld this limitation upon the time within which property owners may complain. The recent case of *Pierce* v. *Drainage District No.* 17, 155 Ark. 89, collects a number of them. This question was very thoroughly considered by us in the recent case of *Road Improvement Dists. Nos.* 1, 2 *and* 3 v. *Crary*, 151 Ark. 484, in which a very similar attack was made on an assessment of benefits. There the assessment had been made according to the zone system, which was said to be arbitrary and unreasonable, but we answered that and other objections to the assessment as follows: 'We have often decided that the method provided in the statute for attacking the validity of the assessment of benefits is exclusive, and that it must be pursued within the time prescribed by the statute. In other words, it

has been settled by repeated decisions of this court that a collateral attack cannot be made upon the assessment of benefits unless void on the face of the proceedings. *Reitzammer* v. *Desha Road Imp. Dist.*, 139 Ark. 168; *Summers* v. *Conway & Damascus Road Imp. Dist.*, 139 Ark. 277; *Nettles* v. *Hazelwood Road Imp. Dist.*, 144 Ark. 632; *Sikes* v. *Douglas*, 147 Ark. 469."

House v. *Road Improvement Dist. No.* 2, 158 Ark. p. 344.

The decisions of the U. S. Supreme Court on this question are thoroughly in accord with the citations heretofore given from the Arkansas Courts.

An assessment for park purposes was made by the supervisors sitting as a board of equalization of the City of Denver, due notice having been given to the land owners to appear and except to any assessment. The Colorado courts had held that the statute in question gave the interested parties full authority to be heard, and having failed to appear, they could not thereafter raise the question as to whether their property had been benefited in the amounts found by the board of equalization. The U. S. Supreme Court held itself bound by the decision of the Colorado court as to the meaning of said statute and held that the due process clause to the Constitution had been complied with.

"The full hearing before the board of equalization excludes the courts from entertaining any objections which are cognizable by this board. The statute itself therefor, is clear of all constitutional faults."

Plaintiffs in error did not avail themselves of the privilege of a hearing, as provided by this sec-

tion, but after the assessing ordinance had been passed, began this proceeding in the district court to test the constitutionality of the law. As we have said, the question as to what should be a proper construction of the charter provision was not for our decision; that matter was within the sole authority of the state court, and was disposed of, as the Supreme Court of Colorado held, by the former cases reported in 33 Colo. and by our decision based upon that construction in *Londoner* v. *Denver*, 210 U. S. 373, 52 L. Ed. 1103, 28 Sup. Ct. Rep. 708. As the plaintiffs in error had an opportunity to be heard before the board duly constituted by par. 300, they cannot be heard to complain now. It follows that the judgment of the Supreme Court of Colorado must be affirmed.

Fawnwood v. *City & County of Denver*, 252 U. S. p. 12.

The above case was referred to and sustained in a later case going up from the State of Colorado where it was held that the property owners who failed to appear before a tax commission to object to a tentative *ad valorem* basis for assessment for public improvements cannot complain before the courts of the adoption of such basis on the ground of its unconstitutionality. *Millheim* v. *Moffatt Tunnel Improvement District*, 262 U. S. p. 712.

In a later case involving the identical question here raised, the U. S. Supreme Court held itself bound by the construction of the state court of a state statute in reference to the remedies of tax payers for relief from an excessive assessment, and further held that the failure to seek relief from an alleged unequal tax from the proper board cannot be excused because

no appeal to a judicial tribunal was provided in case of the rejection by said board of the party's complaint; and the supreme court further held that although it was alleged that the time for hearing complaints was inadequate, yet the court will not assume that the proper relief would not have been granted; and finally holding that a tax payer must exhaust his available legal remedies before the administrative board before resorting to courts to enjoin the enforcement of an unequal tax.

In said case as stated, in the opinion, the fact was found that the banks as assessed were compelled to pay upon valuation grossly in excess of that put upon other property in the county, but since they had not pursued the remedy provided under the statute, no relief could be afforded.

> "Plaintiff not having availed itself of the administrative remedies afforded by the statutes, as construed by the state court, it results that the question whether the tax is vulnerable to the challenge in respect of its validity upon any or all of the grounds set forth, is one which we are not called upon to consider. The judgment of the district court is accordingly affirmed."
>
> *First National Bank* v. *Board of County Commissioners*, 264 U. S. p. 456.

In the last case on this subject, suit was brought to enjoin as unconstitutional the collection by the State of New York of the annual franchise tax paid upon net income. The New York statute provided that a dissatisfied tax payer might within one year apply to the tax commission for a revision and reassessment according

to the law and facts. The plaintiff did not apply to the commission, but within the year brought this suit; referring to the case next above cited, the U. S. Supreme Court held:

> "A taxpayer who does not exhaust the remedy provided before an administrative board to secure the correct assessment of a tax, cannot thereafter be heard by a judicial tribunal to assert its invalidity (citing cases) * * *
>
> The company, however, made no application to the commission for a revision of the tax; it submitted no evidence to the commission as to any of the matters on which it now relies, either as to the inclusion of profits derived from the munitions business or otherwise; and it did not request the commission to resettle the tax on the ground of any error or invalidity, in matter either of fact or law.
>
> Under these circumstances we think that the company, having failed to avail itself of the administrative remedy provided by the statute for the correction of the tax was not entitled to maintain a bill in equity for the purpose of enjoining its collection."
>
> *Gorham Manufacturing Co.* v. *State Tax Commission of New York*, 266 U. S. p. 265.

"It is urged further that it would have been futile to seek a hearing before the state tax commission because, first, *no appeal to a judicial tribunal* was provided in the event of a rejection of a taxpayer's complaint; and, second, because the time at the disposal of the commission for hearing individual complaint was inadequate. But, aside from the fact that such an appeal is not a matter of right, but wholly dependent upon statute (2 Cooley, Taxn., 3d Ed., p. 1393), we cannot assume that, if application had been made to the commission, proper relief (455) would not have been accorded by that body, in view of its statutory authority to receive complaints and examine into all cases where it is alleged that property has

been fraudulently, improperly, or unfairly assessed. *Collins* v. *Keokuk*, 118 Iowa, 30, 35, 91 N. W. 791. Nor will plaintiff be heard to say that there was not adequate time for a hearing, in the absence of any effort on its part to obtain one."

First National Bank v. *Board of Commissioners*, 264 U. S. pages 454-455.

We quote below the syllabus of two cases decided by the Circuit Court of Appeals of the Eighth Circuit, both holding that suits in equity attacking road assessments must be dismissed and the aggrieved tax payer must follow the method provided by the statute.

"Road Law Ark. (Acts 1913, p. 882), par. 13, provides that the findings of a county court, fixing the assessments of benefits or damages on account of the building of a road, shall have the effect of a judgment against all property in the district, and that any landowner may appeal therefrom to the circuit court. The general laws of the state provide for appeals from the latter court to the supreme court of the state. *Held* that a federal court of equity is without jurisdiction of a suit by a landowner to enjoin enforcement of such an assessment, where the jurisdiction of the county court to make it is not questioned; the remedy at law being plain, adequate, and complete."

"The law of Arkansas, as established by the decisions of its supreme court, does not give a court of equity jurisdiction to enjoin collection of a tax based on an excessive or erroneous assessment, where the statute provides an adequate remedy by appeal from the assessment."

McLaughlin et al. v. *St. Louis Southwestern Ry. Co.*, 232 Fed. p. 579.

"A provision of Road Laws Ark. 1919, vol. 1, p. 387, par. 5 for an appeal by a landowner, deeming himself aggrieved by the assessment of his lands, to the chancery court, with right of appeal to the supreme court, provides an exclusive method for review of assessments for a highway, so that

suits in equity attacking the assessment must be dismissed."

Missouri Pacific Ry. Co. v. *Conway & Vilonia Road Dist.*, 280 Fed. p. 401.

It will be noted that the administrative remedy granted by the statute is ample and complete. Any taxpayer who felt that his assessment was unequal and unjust or who felt that the assessment of other property was such as to place an additional burden on his own property, was given by the statute, notice of the time, place and date of hearing and given an opportunity to file objections so as to seek a correction of the taxpayers' assessment or to have the amount of any other taxpayer, if unequal, adjusted and under the statute opportunity was given for introduction of evidence at a public hearing by any aggrieved taxpayer.

If not satisfied with the action of the Board at such hearing, the taxpayer had an opportunity, under the statute to appeal and finally to carry his cause through the courts.

As the petitioner did not avail himself of such remedies but instead paid the taxes for three years, and then brought the present action, we feel that under the decisions heretofore cited petitioner's bill should be dismissed.

Petitioner's pipe line laid under and across land on a right of way owned by defendant is real estate.

The form of right of way deed used by the pipe line company appears in the record at page 95, and under same an exclusive right of way for the purpose of laying pipe lines and telephone lines is granted for all time with a right to lay such additional lines as the company might find advisable or necessary.

The trial court did not make any finding that the pipe line company property is personal property, basing its decision on other grounds, evidently being convinced

that said pipe line company property is real estate in accordance with the Arkansas decisions.

Under the original act, creating the road district passed during the year 1915, Section 7, the Commissioners are required to assess benefits against the real property and also railroads, street railroads, telegraph, telephone and pipe lines and all other franchises connected with the realty in the district, the assessment of said property to be made by the mile. In accordance with Section 6, of the Amendatory Act of 1917, the assessment of benefits is to be made in case of a reassessment of benefits against the same property detailed in Section 7 of Act of 1915. There is thus a distinct finding and holding of the Arkansas Legislature that the pipe line company's right of way, with the appurtenances thereof, is real estate.

As the decisions of the Arkansas Supreme Court are uniform that the pipe line and right of way are real estate, the Federal Courts are bound to follow the decision of the State Court as to what constitutes real estate and the legislative classifications of the property which has been approved by the state courts will not be interfered with by the Federal courts where the evidence does not show that it is arbitrary, capricious, and confiscatory. *Farcomb* v. *City and County of Denver*, 252 U. S. page 8. *Millheim* v. *Moffatt Tunnel Improvement Dist.*, 262 U. S. page 717.

This question has several times been before the Arkansas Supreme Court and it is now settled that the ownership of a right of way for a railroad, street car line, telegraph and telephone lines and pipe lines, with the property placed on such right of way, is the ownership of real estate, not personal property.

This was first decided in a case where an interurban street car line owned trackage rights over the streets of the City of Fort Smith, and tracks outside the city limits. Where a right of way was owned, the tracks were held real estate subject to local assessment. Within

the city only a franchise was given to use the streets or grounds and no easement or freehold interest in the soil, and the tracks were held to be personal property. *Fort Smith Light & Traction Co.* v. *McDonough,* 119 Ark., page 258.

In a later case a railroad company was assessed to build a bridge across the Arkansas River. The legislative act provided that in addition to the benefits accruing to the land the assessor should value the benefits which will accrue to the railroads, telephone and telegraph lines and other power lines and also pipe lines. There as here, it was alleged, that the Legislature had no power to authorize local assessments levied against such properties. The court decided that the Legislature did have such power, holding

> "There has been much diversity of opinion as to whether or not the right of way of such lines received any benefit from a local improvement, but we are of the opinion that they may be included in the district for the same reason that is generally given in cases of the right of way of railroad companies. Of course the amount of benefits would be a question of facts to be determined by the board of assessors."
>
> *Missouri Pacific Railway Company* v. *Conway County Bridge Dist.,* 142 Ark. p. 11.

In the case of a pipe line company, the assessment of benefits against the pipe line in the country where the right of way was owned, was held to be permissible, but within the city limits of Hope, where the pipe line was laid under the streets, the court held the pipe line to be personal property, drawing the distinction be-

tween the ownership of right of way and the mere license to lay pipes under a franchise granted by a city. *Arkansas Natural Gas Co.* v. *Commissioners*, 142 Ark. page 352.

In a later case a telegraph company was granted a right to use the right of way of a railroad company, under an agreement, that after the expiration of twenty-five (25) years, the contract might expire on one (1) year's notice, being given by either of the companies, but without a clause in the contract requiring the removal of the telegraph lines. In this instance there was a right of way granted over a right of way owned for railroad purposes by the railroad and granted for a term specified of twenty-five years.

Under the legislative act creating the road district, they were required to assess not merely the land, but the railroad, tram roads, telegraph and telephone and pipe lines and other improvements on real estate that will be benefited by the building of the roads. The contention was raised by the telegraph company just as has been raised by the pipe line company in this case, that in certifying out for assessment for county and state purposes, the telegraph line, they had been certified as personal property and that the tax commission had not assessed any part of the land and property of the telegraph company as real estate.

The Arkansas court held; that although the contract between the telegraph company and railroad company was for only twenty-five years, all the facts and circumstances showed that it was intended as a permanent not a limited occupancy or easement, and that

being such a permanent easement, the property of the telegraph company is real estate and the commissioners of the road district had a right under said act of the legislature to assess benefits against it. *Western Union Tel. Co.* v. *Road Dist. No.* 1, 144 Ark. p. 479.

In a case carried by the present petitioner to the Arkansas Supreme Court in an endeavor to avoid the payment of local assessments, it was decided that the very right of way and pipe line at issue in this cause is real estate and subject to local assessment as real property. See *Standard Pipe Line Co. Inc.* v. *Index-Sulphur Drainage District*, 173 Ark. p. 372.

Petitioner claims that its right of way and pipe lines are not sufficiently described so they may be identified for tax purposes.

Petitioner paid the assessments for road purposes for three years and then brought an action to be allowed to pay county and state taxes on its right of way and pipe line without paying such road taxes.

Petitioner had certain correspondence with the tax collector's office about its delinquent road taxes before paying same and after corresponding, did pay such taxes, so it appears that the description was ample to identify the property and petitioner knew what property was and is subject to road taxes.

To prevent the opportunity of any property escaping taxation because of a mis-description or clerical misprision under the original act of 1915, Section 13, R. 206, it was provided that this law shall be liberally construed to give the assessment and tax lists the

effect of a first mortgage and lien against the property. It was further held: "Provided that no informality or irregularity in holding of any meeting or the assessment of the land, or the names of the owners, or the number of acres, shall be a valid defense to an action for taxes" (R. 206).

"Also under Section 8 (R. 201), it prescribed that railroads, rights of way, pipe lines, telegraph and telephone lines and all other franchises connected with the realty shall be assessed according to the betterments and increase in value in like manner as herein prescribed for real estate, except said assessment shall be made per mile and no error in the name and residence of the owner or *the description thereof* shall invalidate said assessment if sufficient description of the property sought to be taxed is given to ascertain where it is situated."

In order that any mis-description or clerical misprision on the assessment roll might be corrected, Section 15 of the original act of 1915 (R. 207), and Section 14 of the amendatory act of 1917 (R. 222), are the same and as follows:

> "In the event the description of any lot, tract or parcel of property upon the list of the assessment hereinbefore provided to be made, shall for any reason be uncertain, indefinite or insufficient, then in any suit brought to enforce the payment of any assessment, the court shall have the power to correct such description and enforce the collection of any assessment due thereon, having due regard for the rights of any parties who may have intervened."

The assessment levied against the value of the pipe lines in the drainage district does not violate the Interstate Commerce clause of the Federal Constitution.

If the contention that no assessment for a local improvement can be laid against a pipe line because it is engaged in Interstate Commerce and such an assessment would place a burden on such commerce, could be seriously entertained, then no railroad, telegraph line, pipe line or other corporation or individual engaged in Interstate Commerce could be made to pay taxes for streets, roads, levees, ditches or other local improvements.

The claim is made that even though benefited by a local improvement, the Pipe Line Company cannot be required to pay for said benefits because its business is largely or solely one resulting in Interstate Commerce.

The cases cited in the *Standard Pipe Line Co.* v. *Index-Drain. Dist.*, 173 Ark. p. 372, *Northern Pacific Railway Co.* v. *Richland County*, 28 N. D. p. 172, Ann. Cas. 1916E and cases cited on page 579. *Illinois Central Railway* v. *Decatur*, 147 U. S. p. 190, seem decisive of the question.

The other cases cited show the distinction between taxes on property which is used in Interstate Commerce, such as the tax at issue, and taxes upon the act of Interstate Commerce. *Cleveland Railway Co.* v. *Bachus*, 154 U. S. p. 439. *Adams Express Co.* v. *Ohio State Auditor*, 165 U. S. p. 194.

This court held:

"A state may not tax property belonging to a foreign corporation which has never come within its borders—to do so under any formula would violate the due process clause of the 14th Amendment. In so far, however, as movables are regularly and habitually used and employed therein, they may be taxed by the state according to their fair value along with other property subject to its jurisdiction, although devoted to Interstate Commerce."

Union Tank Line Co. v. *Wright*, 249 W. S. p. 275.

In a case where similar claim was made in reference to a railroad company, the objection based on the commerce clause of the constitution was abandoned by the counsel for the railroad on appeal to the U. S. Supreme Court. *Kansas City S. R. Co.* v. *Road Improvement Dist. No. 3*, 266 U. S. p. 386.

See also:

Postal Telegraph-Cable Co. v. *Adams*, 155 U. S. 688.

Alpha Cement Co. v. *Massachusetts*, 268 U. S. 203.

Union Tank Line v. *Wright*, 249 U. S. 275 at 282.

American Mfg. Co. v. *St. Louis.*, 8 Fed. (2d) 477."

Miller County Highway & Bridge District v. *Standard Pipe Line Co., Inc.*, Fed. Reporter, 2nd Series of Vol. 19, p. 3.

A state may impose a tax upon the value at the well of natural gas produced within its limits, although the gas is transported into other states for consumption.

Hope National Gas Co. v. *Hall*, 274 U. S. p. 286.

Land may be classified for road assessment purposes as rural and urban; and railroad, telegraph, telephone and pipe lines may be assessed by the mile.

The zoning system for assessment of benefits in road districts has been uniformly adopted in Arkansas in the rural districts, and the assessment of city property has usually been a certain percentage of its assessed value. Public utilities are assessed by the mile, taking into consideration the benefits to be received from same and such system has been upheld by the Arkansas courts.

> "Appellants next contend the classification of the property adopted by the board for the assessment of benefits was discriminatory against the various property owners. They adopted an acreage basis for rural property, a valuation basis for city property, and a mileage basis for railroads, telegraph, and telephone. A classification of the various kinds of property as a basis upon which to assess benefits has been approved by this court as feasible and practical."
>
> *Oates* v. *Cypress Creek Drainage Dist.*, 135 Ark. 155.
>
> *Bulloch* v. *Dermott-Collins Rd. Imp. Dist.*, 155 Ark. p. 183.

The above was the system used in the road district attacked in the case of *Kansas City Southern Railroad* v. *Road Improvement District No. 3*, 156 Ark. p. 117, and affirmed on appeal by the U. S. Supreme Court, 266 U. S. p. 379.

Notice Published of Assessment of Benefits.

The testimony shows conclusively that notice of the filing of the assessment roll was given by publica-

tion as required by law granting the owners at least thirty days within which to appear and except to their assessment. Such notice complied fully with the due process clause of the U. S. Constitution and it was not necessary that actual notice be given to each separate land owner in the district. According to the evidence, the road was built immediately adjoining the pumping station and general headquarters of the pipe line company, and they of necessity used the road, saw same and knew of its construction. The testimony also shows that one Mr. Hillford, the superintendent in charge of the company's affairs in Miller County, Arkansas, who was in daily communication with the home office through a private telegraph wire, knew about the assessment for road purposes and discussed same with George Conway, one of the assessors who had an office adjoining that of Hillford. The Pipe Line Company also had actual notice of the assessment of benefits, see letters to and reply from petitioner's tax commissioner (Exhibits, R. 75 to 77). The assessment being *in rem* against the property itself notice thereof by publication fully complied with the constitutional requirements.

Four weeks' notice was held to be adequate time to afford due process of law where land was sold for levee taxes, and referring to lands owned by non-residents, the U. S. Supreme Court held:

> "It should be kept in mind that the laws of a state come under the prohibition of the 14th Amendment only when they infringe fundamental rights. A law must be framed and judged of in

consideration of the practical affairs of man. The law cannot give personal notice of its provisions or proceedings to everyone. It charges everyone with knowledge of its provisions; of its proceedings it must, at times, adopt some form of indirect notice, and indirect notice is usually efficient notice when the proceedings affect real estate. Of what concerns or may concern their real estate men usually keep informed, and on that probability the law may frame its proceedings; indeed, must frame them, and assume the care of property to be universal, if it would give efficiency to many of its exercises."

Ballard v. *Hunter*, 204 U. S. p. 262.

The time limit set by the statute, within which objections to an assessment for road purposes, could be made, was upheld by the Arkansas Supreme Court in *House* v. *Road Improvement District No.* 2, 158 Ark., page 344. On appeal the U. S. Supreme Court held that the statute allowed twenty-eight days from the first publication of the notice within which the petitioner could have objected to the assessment, holding as follows:

"Accepting the statute as construed by state courts the suggested objection to its validity appears to us wholly wanting in merit."

House v. *Improvement District*, 266 U. S. p. 177.

As in the Bullard case above cited, House was a non-resident of the state. See also *Larimy Land Co.* v. *Hoffman*, 268 U. S. p. 279.

The ratification and confirmation of the assessment of benefits by Acts of 1917 and 1925 was a legislative assessment, and is binding upon the property owner unless absolutely arbitrary, unreasonable and absurd.

> "It is next insisted that the Legislature had no power to validate and confirm the assessments which had theretofore been made by the commissioners. Unless the assessment was arbitrary, the Legislature had the power to confirm and validate it. The Legislature had the power in the first instance to have levied the assessment subject only to the right of the land owner to have an arbitrary abuse of that power reviewed by the courts, and it can therefore adopt as correct the assessment made by the commissioners as a reassessment by the Legislature. *Coffman* v. *St. Francis Drainage District*, 83 Ark. 54, and *Davies* v. *Chicot County Drainage Dist.*, 112 Ark. 357."
>
> *Gibson* v. *Spikes*, 143 Ark. p. 274.
>
> "An affirmance of the judgment in this case might be rested entirely on the confirmation of the assessments by the statute cited above. There is no reason shown why the statute is not applicable, for we have decided that, *even during the pendency of litigation*, a statute may be enacted ratifying and confirming assessments. *Sudberry* v. *Graves*, 83 Ark. 344; *Tims* v. *Mack*, 147 Ark. 112; *Gibson* v. *Spikes*, 143 Ark. 270; *Burr* v. *Drainage District*, 145 Ark. 55; *Payne* v. *Road District*, 149 Ark. 491."
>
> *Kansas City Southern Railroad Co.* v. *Road District No. 3*, 156 Ark. p. 118.

In which last case the U. S. Supreme Court in affirming the decision of the state court held as follows:

> "The special confirmatory act was recognized by the supreme court of the state as a legislative determination of the lands which will be benefited, and of the proportions in which they will share in the

benefits. It therefore must be treated here as an admissible legislative assessment of benefits so far as the state constitution is concerned."

Kansas City S. R. Co. v. *Road Improvement Dist. No.* 3, 266 U. S. p. 379.

Among other cases cited as supporting their holding that the finding of the legislature as to benefits is conclusive the U. S. Courts quote approvingly from *Spencer* v. *Merchant*, 125 U. S. 345.

This leading case on this subject has settled for all time that a legislative finding of benefits is conclusive on the courts, state and federal and does not violate the 14th Amendment to the Constitution, unless such legislative determination is palpably arbitrary and therefore a plain abuse of power.

Of the total benefits assessed for road purposes, $6,687,178.00; $60,000.00 in benefits was assessed against the pipe line company, about 9/10 of 1% of the total assessment of benefits.

On said amount during the twenty year period through which the bonds run if the maximum of ten mills per year had been levied, $600.00 per year, $12,000.00 total would be collected in road taxes. However, as shown by the testimony, the maximum has been collected for only four years and the average will probably be less than $500.00 per year to be paid by the pipe line company.

The method in Arkansas of determining benefits received by property in improvement districts.

We quote below from a few of the Arkansas decisions showing that the courts have never attempted to

substitute their opinion and judgment for that of the Legislature or of the assessors appointed to distribute benefits. The Arkansas courts following the rule laid down by various decisions of the U. S. Supreme Court have consistently refused to hold said assessments invalid unless of such a nature as to be so palpably arbitrary as to be shocking to one's ideas of right and justice.

> "The Legislature may commit the ascertainment of the sum to be raised and of the benefited district to commissioners, but is not bound to do so; and may settle both questions for itself, and when it does so, its action is necessarily conclusive and beyond review * * * No hearing would open the discretion of the Legislature, or be of any avail to review or change it. * * * The judicial department cannot prescribe to the legislative department limitations upon the exercise of its acknowledged powers."
>
> *St. Louis & S. W. Ry. Co.* v. *Grayson,* 72 Ark. 127.

The St. Louis Southwestern Railway Company claimed that its railroad track running through Red River Levee District No. 1 had not been benefited by the building of the levee, and proved by its witnesses that the track was above overflow. The court found from the testimony of witnesses who professed to know, that the building of the levee was calculated to result in, and did result in benefit to the track. The court further found:

> "It is not necessary that it should receive absolute protection from overflow, or that it should have been entirely without protection and subject

to inundation before the levee was built. Whether it was benefited to an extent equal to that of other property in the district, we do not consider it necessary to determine. That was a matter largely for legislative determination in fixing the boundaries of the district and providing for the method of assessment of taxes. That was a matter for legislative inquiry and determination, and that the courts must respect such determination, it is settled in so far as it can be done, by a decision of this court in the case of *Railway Company* v. *Grayson*, 72 Ark. 119, and that decision is in accordance with the authorities generally."

After finding that the assessment of the property shall be according to the value as appraised for state and county taxation, the court found that such method of estimating the benefits is not arbitrary or unreasonable, and that the Legislature might assume that benefits would accrue in proportion to the assessed value of the property, *St. Louis S. W. Ry. Co.* v. *Board of Directors*, 81 Ark. 566.

In a case attacking the validity of assessments in an improvement district, after citing the cases heretofore quoted, this court quoted approvingly from "Cooley on Taxation."

> "It has been repeatedly decided that the legislative act of assessing districts for special taxation on the basis of benefits cannot be attacked on the ground of error in judgment regarding the special benefits, and defeated by satisfying a court that no special and peculiar benefits are received."
>
> *Board of Improvement District* v. *Offenhauser*, 84 Ark. 268.
>
> "But such fraud or demonstrable mistake can occur only when the assessments are levied on lands

entirely regardless of the benefits and by reason of a manifest prejudice against the owner, or in a total and reckless disregard of his rights. If the property is benefited to any extent by the improvement, then it can be included in the district, and the mere fact that the benefit assessed against it was exorbitant or excessive, would not invalidate the assessments thereof.

Nor will it be sufficient to show by a preponderance of the evidence only that the property was not benefited by the improvement. If it appears from any substantial testimony that the property receives any benefit from the improvement, then the assessment thereof made by the board cannot be invalidated by the court.

In the case at bar, while the chancellor found that the property of the defendants was not benefited by the improvement, and his finding is sustained by a preponderance of the evidence, nevertheless there was substantial testimony adduced upon the part of the plaintiff showing that the property received actual benefits from improved sanitation and it could be connected with the sewer system so as to successfully drain the sewage from this property and thereby receive benefits. Under such circumstances, the assessment made by them cannot be invalidated or set aside in this proceeding."

Board of Improvement v. *Pollard*, 95 Ark. 552.

"In the case of *Salmon* v. *Board of Directors of Long Prairie Levee District*, the court found that the benefits were anticipated and estimated in advance, and if such benefits did not accrue, the land, nevertheless, was required to pay in proportion to the benefits levied by the Legislature.

"The legislative branch of the government is, as we have said in several cases, the sole judge in the matter of creating improvement districts of this character, in establishing the boundaries thereof and in determining or in providing means

for determining the amount of assessments based on benefits, and the courts will not interfere, unless an arbitrary and manifest abuse of the power is shown. Mere mistakes of the lawmakers, or of those impowered by the lawmakers to make assessments, in fixing the amount or rate of assessments, will not be reviewed and corrected by the courts. There is no merit in the contention that the appellant's lands cannot be taxed because the levee was not properly constructed, or because it has caved away, so that it no longer affords protection from overflow. The anticipated benefits were estimated in advance and the assessments were levied accordingly and the fact that the benefits have not been fully realized affords no avenue of escape from payment of assessments to defray the cost of improvements."

Salmon v. *Board of Directors,* 100 Ark. 369.

The City of Clarendon assessed benefits against the railroad track of the St. Louis Southwestern Railway Company for an improvement district for laying water mains throughout the city. The railway company resisted, claiming that the assessment against their track was arbitrary and unreasonable, which contention was upheld by the chancellor. In reversing the chancellor and upholding the assessment, this court held:

"When the assessment of the benefits arising from and the proportionate cost of a local improvement has been made upon the property specifically benefited thereby, by the proper officials in the manner prescribed by law, it devolves upon the party attacking same to show that the amount of these assessments is excessive or unequal. It has been held that the amount of the benefits which such officials have found and determined to accrue to each lot and parcel of property in a dis-

> trict by reason of the improvement, will be presumed to be correct and just and the courts will not disturb same until the contrary has been shown by the evidence. Such evidence must consist not *merely of opinions that the assessments are excessive,* but of facts which will overturn the *prima facie* fairness and equality of the assessment established by the returns of the assessors."
>
> *Improvement District No.* ..... v. *St. Louis, S. W. Ry. Co.*, 99 Ark. 521.

The legislature created Levee District No. 2 in Jackson County, Arkansas, and included within the district part of the railroad track and right of way of St. Louis, Iron Mountain & Southern Ry. Co. The railway company refused to pay taxes, claiming not only that it received no benefit, but setting forth the fact that it was actually damaged by the building of the levee, and introduced the testimony of its engineers as experts to show such damage. This court quoted with approval the excerpt from "Cooley on Taxation" that we have heretofore set forth at length, and in referring to the contention of plaintiff that it would not be benefited but damaged by the construction of the proposed levee, this court held:

> "After the legislature has determined that a certain area which it has organized into an improvement district will be benefited by the improvement, it is not a question for the courts to determine, upon a preponderance of the evidence, as to whether or not the legislative judgment has been properly exercised. It is only an arbitrary and manifest abuse of power of the legislature in

creating improvement districts that will be reviewed by the courts."

St. Louis Iron Mountain and Sou. Ry. Co. v. *Board Directors of Levee District*, 103 Ark. 134.

The St. Louis & San Francisco R. R. Company refused to pay assessments for the Ft. Smith & Van Buren Bridge District, claiming that the bridge was not a benefit, but an actual detriment to its property, in that traffic would be diverted from the railroad and bridge of the railway company. Although it was shown that the earnings in freight traffic had decreased since the bridge was put into operation, yet the court held this might be accounted for because of poor crops; that future benefits are, to a certain extent speculative, and that the estimated growth of population, because of the building of the bridge, might reasonably be expected to increase the traffic of the railroad, even with the competition, as it is impossible to find an exact standard for benefits to accrue in the future, and since there was some testimony showing that benefits had been received, the assessment was upheld, the court holding:

"The assessment of future benefits is largely a matter of estimate, and, to some extent, speculative. As was stated by Justice Holmes in the case of *Louisville & Nashville Ry. Co.* v. *Barber Asphalt Co.*, 197 U. S. 430, 'the amount of benefit which an improvement will confer upon particular land, and indeed, whether it is a benefit at all, is a matter of forecast and estimate, and on the question of benefits, the present use is simply a prognostication and plea of prophecy.'"

"We must depend largely upon the opinions of men of sound judgment and reasonable information on the subject, to determine what the future benefits will probably be. If it were necessary to find an exact standard, a measure of benefits in advance would be impossible. That view of the matter would necessarily lead to the conclusion that benefits must be enjoyed before there can be an assessment to pay for the improvement, which would be a contradiction in itself.

The question of the legal sufficiency of the evidence is all that we need to pass upon, and we are of the opinion that there is competent testimony of a substantial nature sufficient to base the finding upon as to the amount of benefits fixed."

St. Louis & S. F. Ry. Co. v. *Bridge Dist.*, 113 Ark. 496.

In an improvement district case, going up from Texarkana, after citing numerous cases heretofore quoted, the court held:

"We have decided in numerous cases that a legislative ascertainment that benefits from a local improvement accrue in proportion to the value of the property benefited will be respected unless it be demonstrated to a certainty that a mistake has been made."

Board of Improvement v. *S. W. Gas & Electric Co.*, 121 Ark. page 110.

In a case involving assessments for highway purposes, where the legislative act creating the district had set forth the lands that would be benefited, it was asserted that said act is void as containing a legislative finding that certain lands will be benefited by the proposed road, whereas this is a judicial and not a legis-

lative question. The court answered this contention as follows:

> "It is always a question of fact, and, in a large measure, a matter of opinion, as to what lands will be benefited by a particular improvement. Reasonable minds may, and do differ on this question, and that difference continues to exist when the question of the amount of benefits is reached. Some one must be authorized to decide these questions, for it is inconceivable that there should ever be, or could ever be, a unanimity of opinion upon a subject affording so wide a scope for difference of opinion. The legislature has control of this subject, and it may appoint such agencies to make these findings as it sees proper to create, or it may make the findings on its own account, and when these findings have been made and have been properly declared in the recitals contained in legislative enactments the courts are bound thereby except for arbitrary or obvious and demonstrable mistakes. A number of cases have thus announced the law and what we have just said disposes of the last recited objection of the *Amici curiae*, that the question of benefits is a judicial, and not a legislative question. Indeed, it is conceded that this court has frequently so decided, and we decline to overturn this line of cases."
>
> *Cummock* v. *Alexander*, 139 Ark. 157.

In upholding an assessment of benefits for bridge purposes against a railroad, where the testimony that no benefits would be received was that only of the railroad employes, the Arkansas Supreme Court upheld said assessment using the following language:

> "No attempt was made to prove fraudulent, or capricious or arbitrary action on the part of any officials in making the assessment, the only evidence upon the subject being the opinions of

four employes of the company that the improvement of the road would not benefit the railroad property, and if inequality has resulted from the application of the state law in a customary manner to a situation frequently arising in our country, it is an incidental inequality resulting from a valid classification of railroad property for taxation purposes which does not fall within the scope of the Fourteenth Amendment, which was not intended to compel the states to adopt an iron rule of equal taxation."

It follows that the decree will be affirmed.

Mo. Pac. Rd. Co. v. *Conway County Br. Dist.*, 142 Ark. p. 14.

In the case of *House* v. *Road Improvement District No.....* in which the Arkansas Supreme Court decision has been affirmed by the United States Supreme Court, the legal points involved are almost identical with those in the present case.

The road district was formed by special Act of the Legislature, which designated the territory that would be benefited by the improvement, and the commissioners appointed assessed the benefits against the lands in the district. Mrs. House, a non-resident living in Washington, D. C., brought suit claiming that the assessments against her lands were void as being discriminatory as said lands do not receive any benefit from the roads. She also claimed just as is claimed here, that she had no actual notice of the act creating the district, of the building of the roads, or of the assessment against her land, and that the published notice giving parties aggrieved the opportunity to appear before the commissioners and object to the assess-

ment did not give such notice as is required by due process of law.

Both of said contentions were decided in favor of the district and the court stated:

> "This language is too broad for its meaning to be mistaken. The landowner was given an opportunity, if he desired it, to appear and complain before the commissioners about his assessments, or, if he preferred, he might wait until the commissioners had passed upon the assessments and then appeal to the chancery court, and in either case he was entitled to an original *de novo* hearing. It was not necessary that he formally make himself a party to the proceedings. He was made a party by the act itself, and, unless he appeared before the commissioners and was heard by them, he waived the right to that hearing; and if, at the conclusion of the hearing by the commissioners, a hearing by the chancery court was not invoked, the assessment became final and binding."
>
> Citing *Coffman* v. *Road Improvement Dist. No. 6, Laurence County*, 134 Ark. 411.
>
> *House* v. *Road Improvement Dist. No.* 2, 158 Ark. p. 339.
>
> "Here the Legislature created the district and defined its boundaries. Appellant's lands were placed in the district by the action of the General Assembly itself, which was a legislative determination that those lands would be benefited by the proposed improvement of the highways within the district; and, after doing this, the act provided that the commissioners should determine the assessment of benefits and damages against the respective tracts of land in the district, and should determine, as an administrative matter, the per cent of these betterments to be levied and collected each year; and we think the notice which the act re-

quired is sufficient to constitute due process of law."

House v. *Road Improvement Dist. No.* 2, 158 Ark. p. 343.

The Eighth United States Circuit Court of Appeals has heretofore in a case against a levee district, held that the decision of the Arkansas Legislature is not subject to change by the courts and has quoted approvingly from the Arkansas cases heretofore cited:

> "There is no allegation in the bill that in determining this location, the directors acted in an arbitrary and unreasonable manner. There is no allegation that they did not employ competent engineers. If the legislature had in the act itself located the line in the same place where the directors did locate it, and if it had in the act itself fixed the same height for the levee which the directors afterwards did (both of which things the legislature had the undoubted right to do), it could not for a moment be contended that an allegation such as is found in the bill would require the court to enjoin the prosecution of the work thus ordered by the legislature. Such an allegation would amount to nothing more than the opposition of the opinion of the railway company to the opinion of the legislature."

In *Moore* v. *Board of Directors*, 98 Ark. 113, at page 117; 135 S. W. 819, at page 821, the court said:

> "It will be seen from this that the court held that only an arbitrary and manifest abuse of power by the legislature would be reviewed, and not merely mistakes of judgment. To hold otherwise would be to take away from the lawmakers the powers committed to them and to substitute the judgment of the courts, requiring the latter to

review every matter alleged to have been erroneously determined by the legislature. It is only an arbitrary determination of the lawmakers, made without just and reasonable basis, that the courts should review. We said in *Louisiana & Ark. Ry. Co.* v. *State*, 85 Ark. 12, 106 S. W. 960. 'The legislative determination should be and is conclusive, unless it is arbitrary and without any foundation in justice and reason.' Nor can the courts review merely on general allegations that the assessments are 'arbitrary, excessive and confiscatory.' Facts must be pleaded which show that the decision of the law makers was not merely erroneous, but that it was manifestly outside of the range of the facts so as to amount to an arbitrary abuse of power; for nothing short of that will authorize a review by the courts."

In *Salmon* v. *Board of Directors*, 100 Ark. 366, at page 369, 140 S. W. 585, at page 586, the court said:

"Again, it is alleged in the answer, and it is now insisted, that the benefits to the land in question to be derived from the improvement will not be commensurate with the amount of assessments levied, and that the annual assessment should not have exceeded 4 per cent of the valuation of the lands, which amount appellant tendered in court. The legislative branch of the government is, as we have said in several cases, the sole judge in the matter of creating improvement districts of this character, in establishing the boundaries thereof, and in determining, or in providing means for determining, the amount of assessments based on benefits, and the courts will not interfere unless an arbitrary and manifest abuse of the power is shown. Mere mistakes of the lawmakers, or of those empowered by the lawmakers to make assess-

ments, in fixing the amount or rate of assessment, will not be reviewed and corrected by the courts. *Moore* v. *Board of Directors Long Prairie Levee District*, 98 Ark. 113, 135, S. W. 819; *Board of Improvement* v. *Pollard*, 98 Ark. 543 S. W. 957."

"The decree of the court below is affirmed."

St. Louis Southwestern Ry. Co. v. *Board of Directors of Miller Levee District No. 2*, 207 Federal Reporter, page 342.

The decisions of the Arkansas Supreme Court holding that the finding of the legislature is decisive as to the property benefited, is in accord with the leading text writers on this subject and with the decisions of the United States Supreme Court.

"The whole subject of taxation belongs to the Legislature. So much is unquestioned. The authority may be exercised directly, or in case of local taxes, it may be left to local boards or bodies. If the Legislature has fixed the district and levied the tax, for the reason that in the opinion of the legislative body such district is plenteously benefited, its action must, in general, be deemed conclusive."

Cooley on Taxation.

"The rule thus laid down is a general one, applicable to all improvements of the class with which it deals, and the benefits thus fixed are the same for all property similarly situated with regard to the improvement. An attempt to determine benefits separately for each tract of land would probably, on account of the varying conditions of the evidence and the varying attitude of mind of the judge or jury which is to determine such questions, lead to as many different results as there were different tracts of land involved in separate proceedings. The adoption of a legislative rule determining the amount and apportionment of benefits brings order out of what might in the absence

of some fixed rule, come very near being chaos."

Page & Jones, on Taxation by Assessment.

"In exercising its power, the Legislature may either act directly, determining the area benefited and the rate of apportionment absolutely; or it may delegate to local authorities the power to decide as to the necessity of the improvement, and this delegation may cover all or any of these points. The Federal Supreme Court holds that the Legislature, acting directly, may determine the district benefited by a public improvement and lay down an absolute rule as to the apportionment of the expense among the parcels of land included. When this course is adopted, the act of the Legislature must be deemed conclusive alike of the question of the necessity of the work and of the benefits as against the abutting property, and to open such questions to review by the courts upon the petition of any and every property holder would create endless confusion."

McGehee on Due Process of Law, 248.

We quote below from the U. S. Supreme Court decisions to the effect that the Legislature may determine the area and property benefited, leaving to the commissioners the apportionment of the taxes and when it does so, its action is conclusive and beyond review.

"The Legislature may commit the ascertainment of the sum to be raised and of the benefited district to commissioners, but it not bound to do so, and may settle both questions for itself; and when it does so, its action is necessarily conclusive and beyond review." * * * "The lands might have been benefited by the improvement, and so the legislative determination that they were, and to what amount or proportion of the cost, even if it may have been mistakenly unjust, is not open to

our review. The question of special benefit and the property to which it extends is of necessity a question of fact; and when the Legislature determines it in a case within its general power, its decision must of course be final." * * * "When the determination of the lands to be benefited is entrusted to commissioners, the owners may be entitled to notice and hearing upon the question whether their lands are benefited and how much. But the Legislature has the power to determine, by the statute imposing the tax, what lands, which might be benefited by the improvement are in fact benefited; and if it does so, its determination is conclusive upon the owners and the courts, and the owners have no right to be heard upon the question whether their lands are benefited or not, but only upon the validity of the assessment, and its apportionment among the different parcels of the class which the Legislature has conclusively determined to be benefited.

In determining what lands are benefited by the improvement, the Legislature may avail itself of such information as it deems sufficient, either through investigations by its committees, or by adopting as its own the estimates or conclusions of others, whether those estimates or conclusions previously had or had not any legal sanction."

Spencer v. *Merchant*, 125 U. S. page 345.

"It has been held in this court that the legislature has power to fix such a district for itself without any hearing as to benefits, for the purpose of assessing upon the lands within the district the cost of a local, public improvement. The Legislature, when it fixes the district itself, is supposed to have made proper inquiry, and to have finally and conclusively determined the fact of benefits to the land included in the district, and the citizen has no constitutional right to any other or further hearing upon that question. The right which he thereafter has is to a hearing upon the question of

what is termed the apportionment of the tax, *i. e.*, the amount of tax which he is to pay."

Fallbrook Irrigation District v. *Bradley*, 164 U. S. page 155.

We cite below various cases with which this court is so familiar that we refrain from making excerpts.

Kelley v. *Pittsburg*, 104 U. S. page 78; *French* v. *Barber Asphalt & Paving Co.*, 181 U. S. page 324; *Webster* v. *Fargo*, 181 U. S. page 394; *Cass Farming Co.* v. *Detroit*, 181 U. S. page 396; *Davidson* v. *New Orleans*, 96 U. S. page 97; *Houck* v. *Little River Drainage Dist.*, 239 U. S. page 260; *Wagoner* v. *Lesser*, 239 U. S. page 218; *Bauman* v. *Ross*, 167 U. S. page 548.

Counsel is quite familiar with the cases relied upon by the attorneys for the pipe line company, *Norwood* v. *Baker*, 172 U. S. page 269; *Myles Salt Co.* v. *Drainage Dist.*, 239 U. S. p. 478; *Gast Realty Co.* v. *Snyder Granite Co.*, 240 U. S. page 57.

Also with the recent cases that have gone up to the Supreme Court from Arkansas, *Kansas City Southern Railway Co.* v. *Road Improvement District No.* 6, 256, U. S. page 659; and *Thomas* v. *Kansas City Southern Railway Co.*, 261 U. S. page 483.

The decision in each one of the five cases last above cited was made because the court found under the peculiar facts in each of said cases that the assessment was so grossly discriminatory as to be unjust and absurd.

In the instant case the facts as developed from the testimony show a substantial benefit to the pipe line company, certainly fully as much benefit as will be received

by many thousands of lots in the City of Texarkana against which, just as in the case of the pipe line, an assessment of benefits has been made equal to the assessment against each of said lots for county and state taxes.

Recent decisions of the U. S. Supreme Court quote at length from the cases we have heretofore cited, and reaffirm the holding therein set forth. Said recent cases also refer to the five cases above cited on which the attorneys for the pipe line company must depend and distinguish said five cases because of the finding that no benefit could be received under the peculiar state of fact set forth in said cases.

The witnesses for the pipe line company in their testimony, admitted that a benefit was received by the parties working on the pipe line, by those hauling for the pipe line company with trucks and wagons and that a benefit was received by the owners of the pipe line in the access given by the roads to their officials, laborers and employees, who had to work on, repair and rebuild the pipe line, but in the testimony, they asserted such benefit was received by the owners, employees, teamsters and laborers of the pipe line company, and none by the pipe line itself.

Said testimony admits that some one received a benefit from the building of the roads, but attempts to distinguish between an inanimate object or tract of land and the person having the beneficial ownership of same, which appears to be sophistry. One might as well say a tract of farm land should not pay taxes for the road because the owner and not the land uses

and passes over the road. One might as well say that the city lot should not pay an assessment for water works or sewerage, since the owner of the house on the lot, and the party living in the house are the ones to get the benefit from the water and sewerage and not the house and lot.

The testimony of the plaintiff's witnesses showed that originally one line of pipe was laid on the right of way, and afterwards during 1920 to 1924, three additional lines of pipe were laid, and the attorney for the pipe line company asked the witnesses if such pipe before being laid was not personal property.

The pipe line and right of way were assessed the benefits to be received from the road, and although pipe not attached to the soil do not become real estate until laid on the right of way, yet after being laid so as to become part of the right of way, they change from personal to real property just as the lumber and brick change when built into a house, from personal to real property.

The testimony of plaintiff's witnesses showed the average cost "stringing" or hauling and delivering pipe on the right of way to be $400.00 per mile although they stated that such cost at times would run to as much as $1000.00 per mile.

They admitted (what is a patent fact without such admission), that it is cheaper to haul over a hard surface than over a dirt road.

The testimony showed without contradiction that three times as many pipe could be hauled at a load over hard surface roads as over dirt roads, and the

testimony of witnesses was introduced that one-half of the hauling cost could be saved by using the good roads.

Three lines of pipe along the entire right of way, twelve and three-quarters (12.75) miles, have been laid in the last four years, and if one-half of the cost of hauling has been saved, $200.00 per mile, on more than 37 miles, the road in four years has saved the pipe line company $7500.00, about two-thirds of the total benefits that will be collected, and we may presume that during the remaining eleven years an equal amount of saving will be effected from the hauling of pipe for construction and repair purposes. It would therefore seem that a very definite and direct benefit from the building of the road has been had by the pipe line company.

In the case of *Branson* v. *Bush*, the circuit court of appeals enjoined the collection of the tax. The legislature had ascertained and declared that the road and all other real property in the district would be benefited more than the cost of the road and had assessed against the railroad and each tract of real estate a benefit equal to the assessment for state and county purposes. Four employees of the railroad company gave as their opinion that the railroad could receive no benefit from the improvement and the circuit court of appeals held that the evidence showed that railroad derived no benefit from the road. The supreme court set aside this holding as the evidence was not sufficient to show the action of the General Assembly to

be arbitrary, capricious or confiscatory in declaring the railroad benefited, citing from *Spencer* v. *Merchant*, and holding as follows:

> "It is decided that if the proposed improvement is one which the state had authority to make and pay for by assessments on property benefited, the legislature, in the exercise of the taxing power, has authority to determine, by the statute imposing the tax, what lands, which might be benefited by the improvement, are in fact benefited by it; and if it does so its determination is conclusive upon the owners and the courts, and the owners have no right to be heard on the question whether their lands have been benefited or not."
>
> *Bush* v. *Branson*, 251 U. S., page 189.

In the case of *Valley Farms Co.* v. *Westchester County*, a large area of land was assessed to build a trunk sewer using the county and state assessment as the measure of benefits; because of the location of said land in a valley, the property could not connect with the sewer without tunnelling through certain hills and four miles of connecting line would have to be built at probably a cost of $300,000.00 to use the trunk sewer.

The contention was made that no notice of hearing upon the apportionment of the assessments had been given, and the tax, without any opportunity to use the sewer save at an expenditure of $300,000.00 was palpably arbitrary and an abuse of legislative power.

After citing from many of the cases hereinbefore set forth the supreme court held: That the fact of the additional expense required to be made to use the

sewer did not show that the lands were arbitrarily included and that they were subject to said tax:

> "The doctrine has been definitely settled that, in the absence of flagrant abuse or purely arbitrary action, a state may establish drainage districts and tax lands therein for local improvements, and that none of such lands may escape liability solely because they will not receive direct benefits."
>
> *Myles Salt Co.* v. *Iberia & St. M. Drainage Dist.; Gast Realty & Invest. Co.* v. *Schneider Granite Co.*, and *Kansas City Southern R. Co.* v. *Road Improv. Dist. supra*, present facts deemed sufficient to show action "palpably arbitrary, and a plain abuse" of power. Here the allegations make out no such situation. All lands within the district ultimately may be connected with some portion of the sewer, and we cannot say they derive no benefits therefrom, or that any were included arbitrarily, or for improper purposes.
>
> It was unnecessary for the legislature to give notice and grant hearings to owners before fixing the boundaries of the district so as to include their lands, and prescribe the method of taxation. And it is unimportant that the sewer had been completed before the boundaries of the present district were established.
>
> *Phillip Wagner* v. *Leser, supra.*
>
> *Valley Farms Co.* v. *Westchester County*, 261, U. S. p. 164.

In the Colorado tunnel case heretofore cited, the decision of the legislature was held binding, even though direct and immediate benefits could not be shown to the land. The same benefit being received by lands within the taxed district as by other lands of the state not taxed. The supreme court upheld the classification of the Colorado Legislature as follows:

"Classification as to special benefits. It is contended that no special benefits of a direct and immediate character will accrue from the tunnel to the lands lying within the district, as distinguished from the other lands in the state, and that hence the classification made by the act in providing for the assessments solely upon the lands within the district, is entirely unreasonable and arbitrary. It is well settled, however, that if a proposed improvement is one which the state has authority to make and pay for by assessments on property benefited, the legislature in the exercise of the taxing power has authority to determine, by the statute imposing the tax, what lands may be and are in fact benefited by the improvement; and if it does so, its determination is conclusive upon the owners and the courts and cannot be assailed under the 14th Amendment unless it is wholly unwarranted, and a flagrant abuse, and by reason of its arbitrary character is mere confiscation of the particular property."

Millheim v. *Moffatt Imp. Dist.*, 262 U. S., page 721.

In a recent road case arising in Arkansas, taxes were assessed against a railroad on an *ad valorem* basis to pay the debts of an abandoned road district. Such legislative assessment of benefits against the railroad was upheld by the supreme court and the decision was affirmed on the further ground as follows:

"So far as concerns the Federal Constitution, the validity of the tax may be rested, also, on other grounds. A state may defray the cost of constructing a highway, in whole or in part, by means of a special assessment upon property specially benefited thereby. But it is not obliged to do so. Road building is a public purpose which may be effected by general taxation. The cost may be defrayed

out of state funds, or a tax district may be created to meet the authorized outlay."

Missouri P. R. Co. v. *Western Crawford Road Imp. Dist.*, 266 U. S. p. 190.

On the same day the famous House case given so much notoriety by the New York Times was decided, the court holding:

"This cause grew out of the creation of District No. 5, Conway County, by Act No. 245, and assessment for benefits thereunder. With one exception the questions now raised are the same as those in cause No. 92. As an additional ground for challenging the statute plaintiff in error claims that it is arbitrary and beyond the power of the legislature because the proposed improvement could not benefit plaintiff's lands, while other lands actually benefited were not included. The record does not show that this objection was placed upon any federal ground in the courts below; but assuming that the point was properly made, we think it is clearly without merit. *Houck* v. *Little River Dist.*, 239 U. S. 254, 265, 60 L. Ed. 266, 274, 36 Sup. Ct. Rep. 58; *Miller & Lux* v. *Sacramento Drainage Dist.*, 256 U. S. 129, 130, 65 L. Ed. 859, 863, 41 Sup. Ct. Rep. 404; *Valley Farms Co.* v. *Westchester County*, 261 U. S. 155, 163, 164, 67 L. Ed. 585, 590, 43 Sup. Ct. Rep. 261."

Mrs. M. L. House v. *Road Improvement District No. 2*, 266 U. S. p. 177.

In the Archer County case decided January 4, 1926, that caused such consternation among the holders of Texas bonds, the supreme court held "that due process" had not been had as there was no legislative enactment authorizing the creation of the road district. If, as in the instant case, there had been a legislative act

determining what property would be benefited by the road, the bond issue would have been upheld. We cite as follows from the court decision:

> "The legislature may make assessments for local improvements ratably on the basis of property valuation (*Valley Farms Co.* v. *Westchester County*, 261 U. S. 155, 67 L. Ed. 585, 43 Sup Ct. Rep. 261); but where the amount to be raised is determined and the property to be assessed is selected as in this case, the requirement that the burden shall so spread is not a legislative assessment.
>
> Where a local improvement territory is selected, and the burden is spread by the legislature or by a municipality to which the state has granted full legislative powers over the subject, the owners of property in the district have no constitutional right to be heard on the question of benefits."
>
> *Browning* v. *Hooper*, 269 U. S. p. 396.

In the Arkansas road case that went from Sevier County to the supreme court, questions at law identical with the present case were involved. The zone system was used for rural property and the assessors placed assessments on the town lots and railroads in the proportion that they deemed them benefited by the road. The railroad appealed just as the pipe line company has done here on the ground that they received no benefit whatever, that their assessment was purely arbitrary and in contravention of the due process clause of the 14th Amendment to the Constitution. There, as here the legislature confirmed the assessment of benefits and there, as here, the employees of the railroad company, called as witnesses, asserted vigorously their opinion that the railroad would receive no benefit,

without advancing anything substantial in support of said opinion.

The supreme court stated that a better case might have been made if the witnesses had devoted themselves to showing that the amount of benefits assessed against the railroad was excessive instead of attempting to show that no benefit whatever would be received. The decision cited nearly all of the cases to which we have heretofore referred and distinguished between the five cases relied upon by the pipe line company heretofore mentioned. We cite from said case as follows:

> "By a long line of decisions in this court it has been settled that, where the state constitution, as construed by the state court of last resort, does not provide otherwise, the legislature of a state may require that the cost of a local public improvement such as the construction or reconstruction of a public road, be distributed over the lands particularly benefited, and charged against them according to their value, their area, or the benefits which they will receive; may itself determine what lands will be benefited and in what proportions they will share in the benefits; and may avail itself, for the purposes of that determination, of any information which it deems appropriate and sufficient, including such as may be afforded by reports and estimates made in prior assessment proceedings having the same object. Only where the legislative determination is palpably arbitrary, and therefore a plain abuse of power, can it be said to offend the due process of law clause of the 14th Amendment. * * *
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> And only where there is manifest and unreasonable discrimination in fixing the benefits which the several parcels will receive can the legislative determination be said to contravene

the equal protection clause of that amendment. *Kansas City Southern R. Co.* v. *Road Improv. Dist.*, 256 U. S. 658, 65 L. Ed. 1151, 41 Sup. Ct. Rep. 604; *Thomas* v. *Kansas City Southern R. Co.*, 261 U. S. 481, 67 L. Ed. 758, 43 Sup. Ct. Rep. 440.

To justify an assessment of benefits to particular lands it is not essential that the benefits be direct or immediate (*Valley Farms Co.* v. *Westchester County, supra*); but it is essential that they have a better basis than mere speculation or conjecture (*Kansas City Southern R. Co.* v. *Road Improv. Dist. supra*). In the case of railway property they may consist of gains from increased traffic, reasonably expected to result from the improvement. *Thomas* v. *Kansas City Southern R. Co., supra*; *Branson* v. *Bush*, 251 U. S. 182, 64 L. Ed. 215, 220, 40 Sup. Ct. Rep. 113.

"The special confirmatory act was recognized by the supreme court of the state as a legislative determination of the lands which will be benefited, and of the proportions in which they will share in the benefits. It therefore must be treated here as an admissible legislative assessment of benefits so far as the state constitution is concerned.

The evidence, as before outlined, falls short of showing that the assessment against the railway property was either palpably arbitrary or unreasonably discriminatory. The burden was on the railway companies to overcome the presumption attending the legislative determination, and this they failed to do; for, under the evidence produced, it is an entirely admissible view that the railway property will be substantially benefited by the road improvement, and that the benefits are fairly assessed as between that property and the farm lands and town lots. True, the amount of benefits which will accrue to the railway property is largely a matter of forecast and estimate; but the same thing is true of the farm lands and town lots, and also of benefit assessments in

general. See *Louisville & N. R. Co.* v. *Barber Asphalt Paving Co.*, 197 U. S. 430, 433; *Butters* v. *Oakland*, 263 U. S. 162, 165. Forecast and estimate based on a solid premise of fact and experience are not to be confused with mere speculation and conjecture. *Kansas City Southern Ry. Co.* v. *Road Improv. Dist. No. 3*, 266 U. S. p. 381.

We call special attention to the two cases relied on by the pipe line company in the district court, *Board of Directors Miller Levee District No. 2* v. *Prairie Pipe Line Company*, 292 Fed., page 475; and *Kansas City Southern R. Co.* v. *Road Improvement District No. 6*, 256 U. S., page 660.

In the case of the pipe line company all property was assessed on an *ad valorem* basis, so the question of benefits to the property was not taken into consideration in a classification of the different kinds of property, whereas here, the assessors assessed all property on a benefit basis and placed against each piece and character of property what in their best judgment would be the actual benefit received from the building of the roads. On such benefit basis, the twelve and three-quarter (12.75) miles of right of way with the pipe lines and telegraph lines under and over said right of way, pay to the road district a maximum annual tax of six hundred dollars ($600.00); whereas in the levee case above referred to, six (6) miles of right of way with the pipe line thereunder paid an annual tax of twenty-five hundred sixty-one dollars ($2561.00). Therefore on the same proportion of mileage of right of way, in the levee case the pipe line com-

pany was assessed annually ten times the tax assessed in the instant case.

The method of assessment here being on a benefit basis and the annual tax being in the instant case less than one-tenth (1/10) of that in the Levee-Pipe Line case, we most respectfully suggest that the assessment in the instant case is not excessive in proportion to the benefits received.

In the *Kansas City Southern R. Co.* v. *Road Improvement District* case cited above, more than 25% of the assessment for road purposes was levied against the railroad track. The supreme court held such assessment excessive, but held that since the railroad would receive some benefit, an assessment for road purposes in proportion to the benefits received should be made against its track and the cause was remanded that such reasonable assessment of benefits might be made. Here only 9/10ths of one percent of the assessed benefits were laid against the pipe line right of way.

Estoppel.

In respondent's answer to petitioner's bill in equity among other defenses, estoppel was pleaded, "for the further cause that by its failure to take action to contest the validity of said assessment, petitioner is now estopped from bringing this action" (R. 32).

The evidence shows that petitioner had published legal notice and actual notice of the building of the road, that bonds were issued in the sum of $540,000.00 to pay for the road and that petitioner paids its road assessments for three years, the years of 1916, 1917 and

1918; and no action was taken during all that time to contest the validity of the tax against the pipe line company.

The Arkansas courts have held that mere silence on the part of a property owner does not create estoppel, but conduct that induces another person to spend money will create an estoppel. *Harnwell* v. *White*, 115 Ark. page 99.

Also in a later case the Arkansas Supreme Court held:

> "The appellants are estopped by their conduct in acquiescing in the construction of the improvement to challenge the validity of the proceedings at this time."
>
> *Curtis* v. *Hobson*, 127 Ark. p. 349.

In one of the circuit court of appeal cases relied on in the lower court, decided March 1, 1926, in the Supreme Court of the U. S., *Risty* v. *Great Northern Ry. Co.*, 70 L. Ed—it was held estoppel did not lie, but in that case, different from the instant one, the lands and railroad track against which an attempt was made to levy the assessment did not lie within the boundaries of the drainage district and of necessity no action or silence on the part of the railroad company could create an estoppel in favor of the district in which the railroad owned no land or track.

Bonds in the sum of $540,000.00 have been sold to build the roads in question and of said amount, over $350,000.00 are still outstanding.

If after waiting this length of time without questioning its assessment, and if after making payments

of taxes for the various years shown by the testimony, the Pipe Line Company can now raise the question of no benefits having been received, then each telephone and telegraph line, each tram road, gas pipe line and each railroad and the owner of each tract of land in the district can also go into court and question the validity of the taxes assessed against them.

If this should be allowed by the courts, all public improvements would of necessity cease as no person could afford to buy bonds with any assurance that property security for the payment of the bond issue, would not gradually be exempted so enough property would not be left to insure payment of the bonds and interest.

In *Gulf & S. I. R. Co.* v. *Ducksworth*, 286 Fed. 645, 648, (C. C. A. 5) the court said:

> "The bill does not allege that the appellant interposed any objection to the creation of said district or to the levy of the taxes in previous years, and it is fair to assume that it made none * * * It does not deny that it knew that the bonds were being issued, or that the taxes to pay the same would be a charge upon its property within said district for many years, and it would seem that it should not have stood by and permitted the bonds to be issued and sold to *bona fide* holders without promptly interposing any objection it had."

As stated by the Arkansas Supreme Court, in the House case some time must be reached when the question as to the benefits received becomes final, otherwise, one could never tell when a bond issue would be defeated, even through a valid issue, by gradual with-

drawal from taxation of all property giving security to the bond issue.

> "This action of the court must be affirmed, for there must come a time when such questions are foreclosed. It was upon the faith of these assessments that the district incurred obligations and issued negotiable bonds with which to pay them, and these bonds are owned by the investing public throughout the United States."
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> *House* v. *Road Improvement District No. 2*, 158 Ark. p. 345.

The taxes for the years 1916 to 1918 inclusive have been paid, by the pipe line company and taxes are due for the years 1919 to 1924 inclusive. No additional road taxes will be levied against the petitioner's pipe line or any other lands in the road district, see the Martineau bill, copied as an appendix to this brief.

Below find statement showing the percentage of benefits levied each year for road taxes, the amount of taxes being the benefits, $60,000.00 multiplied by the percentage.

1916	6-2/3	mills	
1917	6-2/3	mills	
1918	7	mills	
1919	7	mills	
1920	10	mills	
1921	10	mills	
1922	10	mills	
1923	10	mills	
1924	8.5	mills	(R. 181).

The taxes for the year 1919, collectible prior to April 10, 1920, were levied under the assessment made under the original act passed during the year 1915, the taxes

for the other years were levied under the reassessment of benefits filed July 24, 1920 (R. 38). However, as shown by testimony, such reassessment of benefits made no changes in the Pipe Line Company's assessment or of the property in Texarkana, Arkansas, and only changed certain lands from one zone to another zone made necessary by the relocation of the road as built, the benefit in each zone remaining the same as in the original assessment.

Petitioner complains as to the assessment for state and county purposes of the land located in Miller Levee District No. 2, same being assessed at $10.00 per acre for the cleared land and $4.50 per acre for the wild land. Since the county and state values of the country lands were not used in assessing the benefits against said land, one cannot see just what connection such values have with the question of benefits. No complaint is made as to the assessment for state and county purposes of the land in the hills or above overflow, which are assessed at $5.00 to $6.00 per acre (R. 181), and no complaint is made as to the valuation of the real estate in the city of Texarkana, Arkansas, for state and county purposes, such valuation being used as the basis of the benefits for road purposes. The total assessment of benefits of all property for road purposes is $6,687,-178.00. The assessment of benefits for road purposes levied against the real estate in the city of Texarkana is $2,561,100.00. The assessment of benefits for road purposes of the real estate in the country outside of the City of Texarkana is $3,664,445.00. The approximate

acreage in the district is 136,322 acres and the average assessment of benefits per acre for road purposes on the country real estate is $26.88, said assessment of benefits being three to five times the amount of the assessment for county and state purposes against said acreage (R. 181).

Because of the different character of the property, a benefit for road purposes was assessed against the pipe line of the same amount as its assessment for state and county purposes and the benefit for road purposes was assessed against the real estate in the city of Texarkana of an amount equal to its assessment for state and county purposes, it therefore appears if any discrimination exists because of the assessment of benefits, such discrimination is not against the pipe line company or the real estate in Texarkana assessed for road purposes at the same amount as assessed for county and state purposes, but such discrimination is against the county real estate which is assessed for road purposes at from three to five times the amount of its assessment for county and state purposes.

The Pipe Line Company owns a right of way in the district of approximately twelve and three quarter miles, although the assessment of benefits tabulates only twelve miles. As shown by the map filed as an exhibit by petitioner, the original right of way, No. 1, was 12.61 miles and the present right of way, No. 2, is 12.88 miles.

McGrew, Vice-President of the Pipe Line Company, testified that the cost per mile of one line of pipe is $11,500.00 (R. 236), therefore using the amount of right of way shown by assessment, twelve miles, the cost for two lines of pipe that were in the ground on said right of way, when both the original and the reassessment of benefits was made, would be twenty-four (24) times $11,500.00 or $276,000.00 and the cost of the two additional lines of pipe laid during the year 1923, would be the additional sum of $276,000.00, making the cost of said four lines of pipe on the right of way, according to evidence of petitioner's vice-president, $552,000.00, therefore the assessment of benefits for road purposes in proportion to cost is approximately eleven per cent of such cost.

Petitioner claims that the court of appeals erred in holding that under a legislative determination of benefits they are forbidden to weigh the benefits against the burdens.

As was held in an Arkansas decision:

> "Fraud or demonstrable mistake can occur only when the assessments are levied on lands entirely regardless of the benefits and by reason of a manifest prejudice against the owner, or in a total and reckless disregard of his rights. If the property is benefited to any extent by the improvement, then it can be included in the district and the mere fact that the benefit assessed against it was exorbitant or excessive would not invalidate the assessment thereof" *Board of Improvement* v. *Pollard*, 95 Ark. p. 552.
>
> "The amount of benefits which an improvement will confer upon particular land—indeed

whether it is a benefit at all—is a matter of forecast and estimate * * * A statute like the present manifestly might lead to the assessment of a particular lot for a sum larger than the value of the benefit to that lot. * * * Upholding the act as embodying a principle generally fair and doing as nearly equal justice as can be expected seems to import that if a particular case of hardship arises under it in its natural and ordinary application, that the hardship must be borne as one of the imperfections of human things. And this has been the implication of the cases. *Davidson* v. *New Orleans*, 96 U. S. 97, 106, 24 L. Ed. 616, 620; *Mattingly* v. *District of Columbia*, 97 U. S. 687, 692, 24 L. Ed. 1098; *Parsons* v. *District of Columbia*, 170 U. S. 45, 52, 55, 42 L. Ed. 934, 946, 947, 18 Sup. Ct. Rep. 521; *Detroit* v. *Parker*, 181 U. S. 399, 400, 45 L. Ed. 917, 921, 21 Sup Ct. Rep. 624; *Chadwick* v. *Kelley*, 187 U. S. 540, 544, 47 L. Ed. 293, 294, 23 Sup. Ct. Rep. 175;" *Louisville & N. R. Co.* v. *Barber Asphalt Paving Co.*, 197 U. S. page 434.

As stated in one of the cases heretofore cited, each tax payer must accept the burdens as well as the benefits, the mistakes as well as the successes of the community in which he lives and where his property is located. Miller County has been particularly fortunate in that good judgment was used by the commissioners in laying out and in building its good roads system, and we think counsel for petitioner will agree that the benefits from such good roads have been many many times the burdens required in the form of taxes. Over the State of Arkansas as a whole such good judgment was not used and prior to the passage of the Martineau act, relieving the land from road taxes and paying off the

bonds by a five cents per gallon gasoline tax, the tax burden for road purposes became so heavy that hundreds of thousands of acres of land throughout the state were forfeited and lost to their owners because either they were unable to pay the road taxes or if able, the value of the land because of such taxes, had been so greatly reduced that the taxes amounted to more dollars and cents than the land would bring. Under the petitioner's theory, that no taxes could be collected if no benefit had been received by the land, all such land instead of being forfeited for taxes should have been relieved from the taxes.

After the expiration of time allowed by the statute creating a road improvement district, the correctness of the highway assessment is conclusive on a collateral attack, unless arbitrary on its face.

In a road district the assessments had been approved and the road constructed, the defendant failed to pay his road taxes and suit was instituted by the commissioners to collect same. The defendant filed his answer and cross complaint contesting the validity of the assessment on the ground that his property would not be benefited as the assessment against same was arbitrary and unreasonable and on the further ground that between his land and the road an impassable mountain lay, which constituted a barrier that prevented his land from having any access to the road.

The court sustained a demurrer of the road district to defendant's answer and cross-complaint. On appeal to the Arkansas Supreme Court it was held:

"The statute provides, in substance, that, after the benefits have been assessed, the list shall be filed and notice published and an opportunity given for owners of property to be heard as to the correctness of the assessments. A period of twenty days is provided in the statute for suit to contest the validity of the assessments. * * * The district was, as before stated, created directly by legislative enactment, and the validity of the district cannot be assailed except by showing that the statute is void on its face. *House* v. *Road Improvement District*, 158 Ark. 357. The defense offered by appellants to the enforcement of the taxes constitutes a collateral attack on the validity of the assessments made in accordance with the statute. In the latest case on this subject we said: 'Where the correctness of an assessment is assailed on collateral attack in a suit brought after the expiration of the time allowed by statute, the presumption in favor of the validity and correctness of the assessment is conclusive, unless the assessment is arbitrary on its face.' *Farelly Lake Levee Dist.* v. *Hudson*, 170 Ark. 1106.

There is nothing to show that the assessment of benefits in the present case is void on its face. The appraisal of benefits was a matter of judgment and opinion, and the appraisement made by the officers of the district pursuant to the statute is conclusive on collateral attack. Appellants had the opportunity to challenge the correctness of the assessments when the list was filed and notice thereof published in accordance with the statute, hence it is too late now to challenge their correctness." *Henderson* v. *Road Improvement District No.* 1, 171 Ark. page 9.

In the road district at issue in this cause, although very great and definite benefits have been received from the building of the hard surface roads, yet it would be impossible to show definitely the increase in

value received by either the pipe line or the county lands from the building of said roads. It would be equally impossible to show what benefit has been received from the building of the good roads by the thousands of lots both vacant and with buildings on same in the City of Texarkana, a city of some 15,000 people on the Arkansas side alone, yet counsel for the Pipe Line Company would hardly contend that the legislative finding of benefits against the property in the City of Texarkana and the inclusion of such city in the road district could be overcome by such proof as has been introduced in this cause.

> Counsel willingly admits that the capacity of the pipe line has not been increased by the building of the road, just as the fertility and productiveness of the farms along the road have not been increased, but the pipe line has been made accessible and the Pipe Line Company, as shown by the testimony, has gladly availed itself of the use of such roads in laying the additional three lines of pipe and in repairing the pipe line already laid. * * * Testimony was introduced showing that no crude oil is delivered or distributed in Miller County, but same is carried through pipe lines to the Standard Oil Refinery at Baton Rouge, Louisiana.
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> This court will take judicial knowledge of the fact that gasoline and lubricating oil are the principal products produced in the refining of crude oil, and that among the by-products one of the principal ones is the asphalt used in surfacing roads and streets and in roofing buildings.
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> This court will further take judicial knowledge of the fact that gasoline and lubricating oil are largely used by motor vehicles and that the building of the good roads has been the principal cause of the marvelous increase in the use of

motor vehicles and the enormous consumption of gasoline and oil.

It therefore appears that from the building of these roads in Miller County together with the connecting good roads in Arkansas and other states, the use of the pipe line has been so increased that from the one original line, now four lines have been laid from Oklahoma through Arkansas and Louisiana to Baton Rouge; as was stated in *Branson* v. *Bush*, no agency for the development of a territory equals that of good roads.

It is respectfully submitted that the decision of the U. S. Circuit Court of Appeals should be affirmed.

HENRY MOORE, JR.,
Attorney for Miller County Highway & Bridge District.

MARTINEAU ACT.

Act No. 11 of the Acts of 1927.

Be It Enacted by the General Assembly of the State of Arkansas:

Section 1. It is hereby declared to be the policy of the state to take over, construct, repair, maintain and control all the public roads in the state comprising the state highways as defined herein.

Section 2. Sections 21, 22, 23, 24, 25, 26, 27, 28, 29 and 32 of Act No. 5 of the Extraordinary Session of the Forty-Fourth General Assembly of the State of Arkansas approved October 10th, 1923, with all amendments thereof, are hereby repealed.

Section 3. The commission shall, as soon as possible, ascertain the amount of the outstanding valid bonds issued by road improvement districts in this state, the dates of the maturities thereof, and the annual interest due thereon, and it shall be the duty of the circuit clerk of each county to furnish the commission with such information. The commission shall each year, beginning with the year 1927, allot to each road district in the state now having outstanding bond issues an amount equal to its bonds maturing during the year, together with the interest payable by such districts during the year, plus a paying charge of one eighth of one per cent of bonds to be paid and one fourth of one per cent of interest to be paid, and shall certify to the State Auditor the amount alloted to each road district. The

Auditor shall issue warrants for such amounts on the state highway fund, and procure St. Louis, Chicago or New York Exchange for said amounts payable to the order of the Bank or Trust Company named as payee in the pledge or mortgage of the road district, and if more than one Bank or Trust Company be named as payee, then to one of the named payees. Such warrants shall state in the face of the warrant that it is for exchange payable to ..... Bank or Trust Company for the account of the particular Road District. Said exchange shall be mailed in all cases to the payee at least ten days before maturity or payment date of bonds or interest.

In case the appropriation of six and a half million dollars alloted to road improvement districts is insufficient to pay in full the maturing bonds and interest for the year, the commission shall allot to each district its *pro rata* of such appropriation.

On or before September 1st in each year, the commission shall certify to each road district the amount apportioned to it for the fiscal year, and the commissioners for each district shall reduce the road tax against each tract of land in the district *pro rata* in an aggregate amount equal to the contribution made from the state highway fund.

All roads of the road districts referred to in this section are hereby taken over by the state, but only such portions of said roads which are now or may hereafter be embraced in the state highway system shall be maintained by the state.

Section 4. It shall be the duty of the commission to construct the roads in the state highway system

which are not now constructed, the work of construction to be pushed as rapidly as funds are available for that purpose. The commission shall begin the work of construction in those counties in which the roads embraced in the state highway system have not been constructed by improvement districts, or in which only a small portion of such roads have been so constructed, and shall continue construction work in such counties until the completed roads in each county in the state have been brought to a parity, after which construction work shall be distributed throughout the counties so as to maintain the parity as far as practical.

Section 5. To hasten the completion of the state highway system as rapidly as possible, the commission shall for each of the years 1927, 1928, 1929 and 1930, allot for new construction a sum equal to twice the aggregate amounts allotted to road districts, and for each year thereafter, until the road system of the state is brought to a parity, shall allot as a minimum a sum at least equal to the aggregate amount allotted to road districts. To provide the funds to meet this requirement, the state shall borrow each year whatever amount may be necessary, in addition to the money derived from automobile licenses and fees, gasoline and motor oil taxes, and from Federal Aid, on such terms as to interest and maturities and subject to the limitations hereinafter set out as may be determined to be for the best interest of the highway system, and to issue state highway notes for the amount borrowed, to be secured by a pledge of the revenues derived from gasoline, motor oil, and automobile tax, and to pledge said

revenues, or so much thereof as may be necessary, for the payment of said notes, and the State of Arkansas hereby pledges to the purchasers and future holders of state highway notes that the State of Arkansas will never so long as any of said notes are outstanding permit Sections 35 and 36 of Act No. 5 of the Extraordinary Session of the General Assembly of the State of Arkansas, approved October 10th, 1923, to be repealed or amended so as to in any manner reduce the revenue therein provided for and the State of Arkansas further pledges that in the event of a substitute fuel for motor vehicles or in the event of improvement in equipment that would reduce gasoline consumption or other change of conditions that would reduce the annual revenue from gasoline, motor oil, and automobile tax below seven million five hundred thousand dollars, that in such event the state will amend said Section 35 and 36 so as to provide for an annual minimum revenue from gasoline, motor oil, and automobile tax of seven million five hundred thousand dollars, and the State of Arkansas further pledges that it will not issue in the aggregate more state highway notes than can be fully paid, with the interest thereon, from a revenue of seven million five hundred thousand dollars a year during the period beginning with the first maturity date and ending with the last maturity date of said notes.

The State Treasurer shall set aside out of the first revenues collected from gasoline, motor oil and automobile license taxes, during the first half of each fiscal

year, a sum sufficient to pay the interest on state highway notes, and the maturing notes, due and payable during the first half of the fiscal year and shall set aside out of the first of said revenues collected during the last half of each fiscal year; a sum sufficient to pay the interest on the state highway notes, and the maturing notes, due and payable during the last half of the fiscal year.

Such notes issued by the state shall be known as state highway notes, shall be signed by the Governor, the State Treasurer and the State Highway Commissioner and attested by the Secretary of State and shall state in the face of said notes that the revenues derived from gasoline, motor oil and automobile tax are pledged for the payment of such notes.

The State Auditor, with the approval of the Governor, shall prepare the form of said notes. Said notes shall be in denominations of one thousand dollars or multiples thereof, and shall be payable to bearer, but shall contain a provision for being converted into registered notes by being registered in the office of the State Treasurer. Said notes shall be negotiable paper notwithstanding they are payable out of the state gasoline motor oil and automobile tax.

The state shall sell said state highway notes only as the Highway Commission finds that funds are needed, and shall not sell more than thirteen million dollars of notes in any calendar year. No notes shall be sold until the State Treasurer shall first have advertised for bids in newspapers, periodicals, or financial

journals selected by him, the advertisement to be published not less than twenty (20) days before the day of sale. All bids shall be opened in public, and the state shall have the right to reject any and all bids, and may, if it deems best, auction the sale of such notes.

The Governor, State Treasurer, Secretary of State, State Auditor, and State Highway Commissioner shall constitute a board with full authority to contract the sale of state highway notes.

All proceeds from the sale of state highway notes shall be deposited with the State Treasurer to the credit of the State Highway Fund.

When any such notes shall have been issued, they shall be registered in the office of the State Auditor in a book to be provided by him for that purpose and he shall endorse on each note his certificate that in the issuance thereof all the conditions of the law have been complied with, and shall sign such certificate and authenticate the same with the seal of his office.

Section 6 requires bond to be made by the successful Contractor.

Section 7, requires all members of the State Highway Commission, and all engineers and employees to take the oath of office as set forth in said section.

Section 8, authorizes refunding of taxes where gasoline purchased is used for agricultural, industrial and domestic purposes.

Section 9. No road improvement district receiving aid under this Act shall incur any further expense for compensation to the commissioners, officers, or agents of the district, but this shall not apply to expenses for necessary litigation.

Section 10. Section 33 of said Act No. 5 is hereby amended to read as follows:

"There is hereby appropriated out of any moneys now or hereafter in the State Highway Fund, to be paid during the fiscal year beginning the first day of March, 1927, and ending the last day of February, 1928, the sum of two hundred and seventy-five thousand dollars and during the fiscal year beginning the first day of March 1928, and ending the last day of February, 1929, the sum of two hundred and eighty thousand dollars to pay the salary of the Commissioner of State Lands, Highways and Improvements, all expenses of the office of the Highway Department, and expenses of the members of the advisory board, the salaries and other pay of the highway engineers employed by the commission, the salaries and other pay of such other employees of the commission as the commission may deem necessary, the salaries of employees of the State Land Department, the cost of all office supplies, printing, office equipment, automobile tags, and premiums on surety bonds.

There is hereby appropriated out of any monies now or hereafter in the State Highway Fund, to be paid during the fiscal year beginning the first day of March, 1927, and ending the last day of February, 1928, the sum of five hundred and eighty-five thousand dollars; and during the fiscal year beginning the first day of March, 1928 and ending the last day of February, 1929, the sum of one million one hundred and twenty-five thousand dollars for the payment of interest on State Highway notes.

There is hereby appropriated out of any monies now or hereafter in the State Highway Fund, to be paid during the fiscal year beginning the first day of March 1927, and ending the last day of February, 1928, the sum of two million five hundred thousand dollars and during the fiscal year beginning the first day of March, 1928 and ending the last day of February, 1929, the sum of two million seven hundred and fifty thousand dollars, for the repair and maintenance of the roads and bridges embraced in the State Highway System.

There is hereby appropriated out of any monies now or hereafter in the State Highway Fund, to be paid during the fiscal year beginning the first day of March 1927, and ending the last day of February, 1928, the sum of six million five hundred thousand dollars and during the fiscal year beginning the first day of March, 1928, and ending the last day of February 1929, the sum of six million five hundred thousand dollars, to be allotted by the State Highway Commission to road improvement districts as provided in Section 3 of this Act.

There is hereby appropriated out of any monies now or hereafter in the State Highway Fund, to be paid during the fiscal year beginning the first day of March, 1927, and ending the last day of February, 1928, the sum of thirteen million dollars; and during the fiscal year beginning the first day of March, 1928 and ending the last day of February, 1929, the sum of thirteen million dollars, for the construction of roads and bridges embraced in the State Highway System.

The unused portion of any of the foregoing appropriations made in this section for the fiscal year beginning March 1, 1927 may be used for the same purpose during the fiscal year beginning March 1st, 1928, as an additional appropriation for the fiscal year beginning March 1st, 1928.

There is hereby appropriated out of any monies now or hereafter in the State Highway Fund, to be paid during the fiscal year beginning the first day of March, 1927, and ending the last day of February, 1928, the sum of one million two hundred eighty-eight thousand eight hundred fifty-four dollars and seventy-five cents for aid to County Highway funds of the counties that received aid from state highway fund in 1926, to be distributed on or before June 30th, 1927, to those counties which received aid from the State Highway fund in 1926 for use on the county roads, each of said counties to receive from this appropriation a sum equal to the amount allotted to it in 1926 for such purpose, said amount to be paid in the same manner as paid in 1926.

There is hereby appropriated out of any monies now or hereafter in the State Highway Fund, to be paid during the fiscal year beginning the first day of March, 1928, and ending the last day of Februray, 1929, the sum of one million four hundred sixty-eight thousand two hundred thirty-six dollars and sixty-five cents for aid to County Highway Improvement funds of all the counties of the state, to be distributed on or before June 30th, 1928, as follows:

To each county in which, by the terms of the Act hereby amended, the portion of its allotment from the State Highway fund for its county highway improvement fund was 25% or more of its total allotment, a sum equal to the amount apportioned to it in 1926 for its county highway improvement fund, to each county

in which such portion was less than 25% of its total allotment, a sum equal to 25% of its total allotment in 1926; said amounts to be paid in the same manner as paid in 1926.

The balance of the appropriation of three million dollars specified in Item 17 of Section 1 of Act No. 159, approved March 9, 1925, unexpended on January 1st, 1927, shall not be paid, but shall remain in the state highway fund as a part thereof.

The balance of the appropriations provided for by Act No. 159 of the Acts of 1925, approved March 9, 1925, unexpended on March 1st, 1927, shall not be paid but shall remain in the state highway fund as a part thereof.

All laws and parts of laws in conflict with this Act are are hereby repealed.

Section 11. All suits involving the validity of this Act or any portion thereof shall be deemed matters of public interest, and shall be advanced and disposed of at the earliest possible moment, and appeals in such suits must be taken and perfected within thirty (30) days from the date of the judgment or decree.

If any provision of this Act shall be held to be unconstitutional, such holding shall not affect the validity of the remaining provisions of this Act.

Section 12. It is ascertained and hereby declared that the appropriations herein made are for the purposes of defraying the necessary expenses of the state government; that the defective condition of the public roads is a standing menace to the traveling public, so that the immediate operation of the Act is essential for the protection of the public safety, and an emergency is therefore declared; and this Act shall take effect and be in force from and after its passage.

Approved: February 4th, 1927.

(12)

SUPREME COURT OF THE UNITED STATES.

No. 577.—October Term, 1927.

Standard Pipe Line Company, Incorporated, Petitioner, *vs.* Miller County Highway & Bridge District. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[May 14, 1928.]

Mr. Justice McReynolds announced the opinion of the Court.

This suit, begun in the United States District Court, Western District of Arkansas, May 21, 1924, seeks an injunction to restrain the Miller County Highway & Bridge District from attempting to collect road improvement taxes upon petitioner's property.

Apparently, petitioner—complainant in the original bill—owns twenty-five miles of pipe, laid in two parallel and adjacent lines through Respondent District used for interstate transportation of oil; also, for use in connection therewith, some miles of telegraph and telephone wire, of small value, strung upon leased poles. The total average original cost of the pipe lines (constructed partly in 1909 and partly in 1915) was less than $9,000 per mile. The officers of the District seem to have assessed benefits to be received by all this property from proposed improvements to highways at $60,000. Claiming that the assessment was "wholly unwarranted, unlawful, grossly disproportionate and palpably arbitrary and in discrimination against the property" the bill asked for an injunction, etc.

After answer much proof was taken. The District Court made the following findings of fact and law—

1. That the construction of the highway has not added anything and will add nothing to the value of the property of plaintiff taxed for its construction and maintenance.

2. The construction of the highway of defendant has not added and will not add anything to the revenue which is ob-

tained by plaintiff by the transportation of oil through its pipe lines.

3. The levy of a tax of $5,000.00 a mile upon plaintiff's right of way, the pipe line and telegraph and telephone wires and lines in the Miller County Highway and Bridge District, is not laid upon the same plan that is followed with regard to other lands in the district.

4. The levy of $5,000.00 a mile is palpably arbitrary.

5. The alleged benefit to plaintiff's property by the construction of the highway is speculative and conjectural.

6. Plaintiff is not estopped from maintaining this suit.

7. The Act of the Legislature of Arkansas purporting to validate generally the levy of the tax made by the defendant upon the property in the District is not effective to validate the levy upon plaintiff's right of way and pipe lines, because as to plaintiff's property, such levy is arbitrary.

And upon these findings it ordered an injunction as prayed.

The Circuit Court of Appeals rendered a written opinion April 18, 1927, wherein it held that the pipe lines were real property subject to assessment for benefits like other realty, and that the evidence indicated petitioner's lines received some benefit from the improved highways. Also "That the procedure by which the value of the particular property of the appellee was arrived at and the amount of the benefits determined, does not commend itself to us as altogether fair, nor is the tax imposed against appellee entirely equitable as between it and other property owners within the district; but this, standing alone, is not decisive of the question." After citing a number of cases decided here and in the lower Federal courts it further said—"The tendency of these very late authorities is to greatly narrow the constitutional grounds of objection to assessments of this character. They forbid us to weigh the benefits against the burdens, and require us to hold in the instant case that under all the circumstances there was sufficient justification for the legislative determination that appellee's property was benefited." It made no ruling upon the claim set up by the District that as petitioner had failed to avail itself of the appeal to Commissioners, provided by the statute, it could not maintain the bill.

While it may be that the pipe lines received some small benefit from the road improvements, we regard the assessment actually made against them as arbitrary and unreasonable in amount.

The Circuit Court of Appeals announced its conclusion without knowledge of our opinion in *Road Improvement District No. 1, etc.* v. *Missouri Pacific R. R. Co.*, (April 18, 1927) 274 U. S. 188. Its opinion indicates that if our views there stated had been known, a different conclusion might have been reached. In the circumstances, it seems best to reverse the challenged decree and remand the cause to the Circuit Court of Appeals for a new hearing, as though upon the original appeal; and for such other action as may be necessary properly to protect the rights of the parties.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.